

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Moreci,

Petitioner,

14IWCC0311

vs.

NO: 12 WC 30891

USF Holland, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, causal connection, temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 6, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0211

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

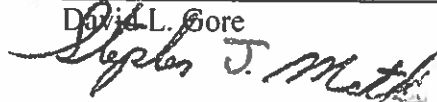
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$20,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 29 2014

DLG/gal
O: 4/17/14
45



David L. Gore



Stephen Mathis



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

MORECI, RICHARD

Employee/Petitioner

Case# **12WC030891**

14IWCC0311

USF HOLLAND INC

Employer/Respondent

On 9/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0222 GOLDBERG WEISMAN & CAIRO LTD
JAMES J NAWROCKI
1 E WACKER DR SUITE 3900
CHICAGO, IL 60601

0766 HENNESSY & ROACH PC
DANIEL S WELLNER
140 S DEARBORN ST 7TH FL
CHICAGO, IL 60603

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

STATE OF ILLINOIS)
)
 COUNTY OF COOK)

14IWCC0311

ILLINOIS WORKERS' COMPENSATION COMMISSION

19(b) ARBITRATION DECISION

RICHARD MORECI
 Employee/Petitioner

Case #12 WC 30891

v.

USF HOLLAND, INC.
 Employer/Respondent

An Application for Adjustment of Claim was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on August 2, 2013. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

- A. ☐ Was the respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to the respondent?
- F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?
- G. ☐ What were the petitioner's earnings?
- H. ☐ What was the petitioner's age at the time of the accident?
- I. ☐ What was the petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to petitioner reasonable and necessary?

- K. ☒ What temporary benefits are due: ☐ TPD ☐ Maintenance ☒ TTD?
- L. ☐ Should penalties or fees be imposed upon the respondent?
- M. ☐ Is the respondent due any credit?
- N. ☐ Prospective medical care?

FINDINGS

- On August 21, 2012, the respondent was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship existed between the petitioner and respondent.
- On this date, the petitioner sustained injuries that arose out of and in the course of employment.
- Timely notice of this accident was given to the respondent.
- In the year preceding the injury, the petitioner earned \$42,640.00; the average weekly wage was \$820.00.
- At the time of injury, the petitioner was 63 years of age, *married* with no children under 18.
- The parties agreed that the respondent paid \$3,694.47 in temporary partial disability benefits.
- The parties agreed that the petitioner is entitled to temporary partial disability benefits for 8-5/7 weeks, from August 23, 2012, through September 8, 2012, and from September 16, 2012, through October 30, 2012.

ORDER:

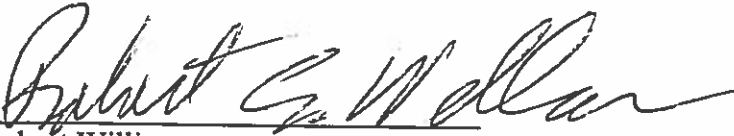
- The respondent shall pay the petitioner temporary total disability benefits of \$546.67/week for 39-3/7 weeks, from on October 31, 2012, through August 2, 2013, which is the period of temporary total disability for which compensation is payable.
- The medical care rendered the petitioner for his left shoulder through August 2, 2013, was reasonable and necessary. The respondent shall pay the medical bills in accordance with the Act and the medical fee schedule. The respondent shall be given credit for any amount it paid toward the medical bills, including any amount paid within the provisions of Section 8(j) of the Act, and any adjustments, and shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier.
- The respondent is given a credit for \$1,160.39 pursuant to Section 8(j) of the Act.

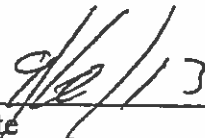
14IWCC0311

- In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of temporary total disability, medical benefits, or compensation for a permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Robert Williams


Date

SEP 6 - 2013

FINDINGS OF FACTS:

On August 21, 2012, the petitioner injured his left shoulder when he slipped while loading, fell and struck his left shoulder. He sought treatment the next day at Concentra Medical Center, where he reported the inability to raise his left hand over his shoulder or straight out. He was treated with medication and work restrictions for a diagnosis of shoulder strain. An MRI on August 24th revealed findings consistent with a full-thickness rotator cuff tear involving the supraspinatus tendon, superior labrum tear and biceps tendinosis. He reported some improvement in pain relief on August 31st but a continued inability to raise his left arm. The petitioner saw Dr. Butler on September 1st, who recommended a rotator cuff repair.

At the request of respondent, Dr. Charles Carroll evaluated the petitioner on October 24th. The doctor later opined on January 30, 2013, that the petitioner's rotator cuff tear was a degenerative condition.

The petitioner worked light duty until October 31, 2012. On December 7, 2012, Dr. Butler performed a left acromioplasty and rotator cuff repair. The petitioner was started on physical therapy. At a follow-up on July 17, 2013, Dr. Bulter noted that the petitioner was doing well and that his strength and endurance were improving and after a few more weeks of work conditioning requested by the petitioner, it was hopeful that the petitioner could return to work. The petitioner testified he has no pain or no limitation of movement. Dr. Butler opined on December 13, 2012, that during his clinical examination on September 1, 2012, he found that the petitioner's ability to function had significantly changed.

The petitioner's prior medical care for his left shoulder began on July 30, 2011, with complaints to Dr. Rachel Zurek of left shoulder pain for four to six months. An MRI of his left shoulder on August 24, 2011, showed a supraspinatus tendinosis, a small partial-thickness articular surface tear of the distal tendon, moderate acromioclavicular joint arthritic changes, a suspicious signal abnormality at the superior labrum and biceps tendinosis. Dr. Thomas Regan opined on September 12, 2011, that the MRI was consistent with rotator cuff disease. The petitioner saw Dr. Butler on June 23, 2012, for left shoulder pain in the anterior and lateral aspect of the left shoulder that interfered with his sleep. He received an injection into his left shoulder, which provided relief. On August 6, 2012, the petitioner returned to Dr. Butler and requested another shoulder injection and reported a sharp stabbing pain in his shoulder. Dr. Butler felt that the petitioner may have torn some additional fibers in his rotator cuff. An MRI on August 7, 2012, showed tendinitis of the supraspinatus tendon with progression of a high grade partial articular surface tear versus a small full thickness tear in the distal supraspinatus tendon since the last MRI, tendinosis of the biceps tendon and findings comparable with a small SLAP tear similar to the last study. On August 8, 2012, Dr. Butler noted that in a telephone call with the petitioner that there was a change in the MRI done on the 7th and that there may be a full thickness tear. On August 9, 2012, the petitioner repeated his request to Dr. Butler for a cortisone injection.

FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:

The medical care rendered the petitioner for his left shoulder through August 2, 2013, was reasonable and necessary.

FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner proved that his current condition of ill-being with his left shoulder is causally related to the work injury. The petitioner's pre-existing left shoulder condition was aggravated by the work injury on August 21, 2012. It is undisputed that the petitioner had pre-existing, longstanding, left shoulder problems and pain for which he received treatment, medication and injections up to and just prior to his work injury. However, after the work injury the petitioner complained of an inability to lift his arm and weakness. A full-thickness rotator cuff tear was apparent after the petitioner's work injury, whereas there was uncertainty as to the degree of the tear two weeks earlier. The preponderance of the evidence establishes that the work injury sustained by the petitioner resulted in more than a temporary aggravation of his pre-existing condition of ill-being with his left shoulder.

FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:

Dr. Bulter took the petitioner off of work on October 31, 2012. The petitioner was unable to work and has not worked since. The respondent shall pay the petitioner temporary total disability benefits of \$546.67/week for 39-3/7 weeks, from on October 31, 2012, through August 2, 2013, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner.

FINDING REGARDING CREDIT FOR MEDICAL PAYMENTS:

The respondent's group health carrier, the Local 710 Welfare & Pension Fund, paid \$1,160.39 for medical care stemming from the work injury. Pursuant to Section 8(j) of the Act, the respondent is given a credit for \$1,160.39. The respondent shall hold the

14IWCC0311

petitioner safe and harmless from any and all claims or liabilities that may be made against the petitioner by reason of having received such payments only up to the extent of such credit.

STATE OF ILLINOIS)
) SS.
 COUNTY OF KANE)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michelle Guzman,

Petitioner,

14IWCC0312

vs.

NO: 12 WC 32078

Yorkville School District #115,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses, prospective medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 19, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0312

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.


No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 29 2014

DLG/gal
O: 4/17/14
45



David L. Gore



Stephen Mathis



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR
CORRECTED

GUZMAN, MICHELLE

Case# 12WC032078

Employee/Petitioner

14IWCC0312

YORKVILLE SCHOOL DISTRICT #115

Employer/Respondent

On 9/19/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.03% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0926 LEONARD LAW GROUP LLC
JOSEPH LEONARD
300 S ASHLAND AVE SUITE 101
CHICAGO, IL 60607

0075 POWER & CRONIN LTD
JOHN FASSOLA
900 COMMERCE DR SUITE300
OAKBROOK, IL 60523

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

19(b)
CORRECTED

14IWCC0312

Case # 12 WC 32078

MICHELLE GUZMAN

Employee/Petitioner

v.

Consolidated cases: _____

YORKVILLE SCHOOL DISTRICT #115

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **Geneva, Illinois**, on **May 7, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

14IWCC0312

On the date of accident, **July 11, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$33,031.96**; the average weekly wage was **\$635.23**.

On the date of accident, Petitioner was **42** years of age, *married* with **3** dependent children.

Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$5,819.95** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$5,819.95**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay the Petitioner in the amount of **\$423.52/week** from August 29, 2012 through December 6, 2012 and from December 19, 2012 through May 7, 2013, representing **34-2/7** weeks, pursuant to Section 8(b) of the Act.

Respondent shall pay medical expenses, pursuant to the Fee Schedule, to the following providers, in the following amounts, with the understanding, pursuant to the Stipulation of the parties, that Respondent shall have credit for amounts previously paid:

Castle Surgicenter	\$1,473.15
Valley Imaging	\$55.00
Walgreens (prescription)	\$6.57

Respondent shall further authorize the treatment regimen as prescribed by Dr. Singh.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

ICArbDec19(b)

Signature of Arbitrator

Date

SEP 19 2013

14IWCC0312

STATEMENT OF FACTS

Petitioner testified she worked for Respondent for the previous four (4) years as a custodian. Petitioner denied ever seeing a doctor, chiropractor, emergency room physician or family physician for cervical or low back pain during the years of this employment.

On July 11, 2012 Petitioner slipped while waxing a hallway at work. Petitioner testified she initially slipped, caught herself, but then slipped again landing on her buttocks. She reported her injury immediately to Brian Debolt. Respondent stipulated to accident.

Petitioner testified she felt pain in her lower and middle back and felt stiff. Petitioner testified she took it easy the rest of the day, punched out, and went home. Petitioner sought medical treatment the following day at Rush Copley Medical Center Occupational Clinic. She testified this facility was recommended by Respondent and that they treat school district employees.

Petitioner presented to Rush Copley Medical Center Occupational Clinic on July 12, 2012. Records show she presented with complaints of pain at the left and posterior neck as well as pelvis and tailbone pain. Records also show Petitioner provided a history of a prior cervical spine injury secondary to a motor vehicle accident. (PX1 and 2) Petitioner testified that she had physical therapy "across [her] shoulders" fourteen (14) years prior to the date of accident.

At the initial visit, at Rush Copley Medical Center, Petitioner was diagnosed with sacrococcygeal sprain and cervical strain. Work restrictions and a course of conservative care was prescribed. Petitioner returned to occupation clinic on July 12, July 20, July 30, August 16, August 21, and August 28, 2012. Petitioner was provided with work restrictions following each of these visits and was allowed to work at her full-time position within her restrictions. (PX 2) Petitioner also received physical therapy at Atlas from August 9, 2012 through August 20, 2012. (PX 6) On her August 28, 2012 visit, at the occupational clinic, it was noted Petitioner continued with symptoms and had not tolerated physical therapy. Petitioner was referred for orthopedic consult. (PX 2) Petitioner testified that therapy did not provide much relief.

Petitioner testified that Respondent refused to allow her to work modified duty beyond August 28, 2012 and she was sent home. Petitioner indicated Respondent provided her with FMLA commencing August 29, 2012. Petitioner testified she started to receive temporary total disability benefits starting August 29, 2012.

Pursuant to referral Petitioner presented to Dr. Thomas McGivney at Castle Orthopedics on September 25, 2012. Petitioner complained of pain in the lower back, which radiated up her spine. Dr. McGivney maintained her restrictions and recommended an MRI and also referred her for epidural injections. (PX 3)

Petitioner underwent the MRI scan on October 10, 2012. On October 16, 2012, Dr. McGivney noted the MRI showed a central disk herniation at L5-S1 with no significant thecal impingement. The doctor noted that although the MRI did not show any coccyx fracture, he felt Petitioner still had a portion of this as coccydynia. He also noted same could be referred pain from the lower back. He referred Petitioner to pain management for an epidural injection. (PX 3)

On November 8, 2012, Petitioner presented to Aurora Pain Clinic where she saw Dr. Bathina. According to the medical records admitted into evidence, Petitioner gave a complaint of lower back pain

radiating all the way up to her neck, with pain greater on the right side of her neck. Dr. Bathina planned to administer a lumbar epidural steroid injection upon approval. (PX 3)

At Respondent's request, Petitioner underwent a Section 12 examination with Dr. Kornblatt on November 29, 2012. The report of Dr. Kornblatt indicates she complained of pain in her tailbone and central low back pain, but denied any complaints of symptoms into her legs or arms. (RX 1) Petitioner testified that she told Dr. Kornblatt about numbness in both legs and feet, as well as tingling in the right side of the body and down her right arm to her hand. After reviewing medical records and performing an examination, Dr. Kornblatt diagnosed minor cervical strain, lumbosacral strain and contusion and coccygeal contusion. The doctor felt those conditions were causally related to July 2012 accident. Dr. Kornblatt wrote that Petitioner did not present with objective findings referable to the cervical spine, lumbar spine and coccyx. He felt the MRI scan was consistent with L5-S1 degenerative disc disease which was not caused, aggravated or accelerated by the July 2012 accident. Dr. Kornblatt felt Petitioner was not at maximum medical improvement. He indicated Petitioner could return to work with a 30lb. lifting restriction noting that after a four (4) week period she could resume working in a full duty capacity. (RX 1)

Petitioner testified that following the Section 12 examination, she was notified by Respondent that she was to return to work. Petitioner testified that she was asked by Jim Humbers to return to work on December 6, 2012. She testified she went back to work and swept floors and wiped tables. Jim Humbers told her to take it easy.

Petitioner testified that she was working on December 7, 2012 and was assigned to mopping. She was told not to pick up anything over her weight restrictions. Petitioner testified as the kids were getting out of school one of the boys knocked over the bucket and she had to clean it up. She testified that her neck and back flared up again while mopping and that she was in a lot of pain.

Petitioner testified she called the district offices immediately to inform them that she had a flare up of her pain. Petitioner testified that she was told to either speak to Frank Bogner head of Human Resources, or to Debbie Cool. Petitioner testified she was not connected to either of these individuals when she called but left a voicemail message for Debbie Cool. Petitioner testified she was never contacted by Debbie Cool or anyone from the district after that date.

Petitioner testified that she tried to go back to Rush Copley on December 7, 2012 but was refused treatment as they needed the workers' compensation case number and did not have it. As a result she instead saw Dr. McGivney on December 12, 2012.

Dr. McGivney examined Petitioner and cleared her to return to work, but changed her restrictions to no lifting greater than 20 pounds, no use of the right arm, and no bending. Petitioner testified she returned the following day on December 13, 2012 and worked that day wiping down tables and sweeping. She testified she worked up until December 18, 2012 within her light duty restrictions.

Petitioner testified she was asked to attend a meeting on Tuesday, December 19, 2012 at the request of Jim Humbers. The meeting was held at the District offices. Present at the meeting was Jim Humbers and Frank Bogner. The meeting was held in Frank's office. Petitioner testified they told her that due to her work restrictions, the district was unable to keep her there any longer and that they would have to let her go. Thereafter, Petitioner received a termination letter dated January 30, 2013. (PX 8)

The epidural injection previously ordered by Dr. McGivney was eventually approved by Respondent and on January 8, 2013 it was administered by Dr. Betvinia of Castle Orthopedics. (PX 5) Petitioner testified she experienced little improvement in her pain after the injection.

At Respondent's request, Petitioner underwent a second Section 12 examination with Dr. Kornblatt. The exam took place on January 10, 2013. Dr. Kornblatt felt that Petitioner again presented with no objective findings to justify her ongoing subjective complaints. He felt that the epidural steroid injection was unrelated to the work accident as same was performed secondary to a degenerative condition of the lumbar spine. He indicated Petitioner had reached maximum medical improvement regarding her cervical and lumbosacral strains. (RX 2)

On February 11, 2013, Petitioner saw Dr. Kern Singh at Midwest Orthopedics at Rush for a second opinion. Records show the doctor performed an examination and reviewed the October 2012 MRI which he felt showed decrease in signal intensity and height and disk space collapse at L5-S1 with a central disk protrusion with a right paracentral component at L5-S1. Dr. Singh diagnosed degenerative disk disease L5-S1 and right greater than left L5-S1 foraminal stenosis. The doctor recommended operative treatment in the form of an L5-S1 fusion. Dr. Singh noted that Petitioner had exhausted all conservative care in the form of physical therapy, medical management and epidural injections. Dr. Singh also provided that Petitioner was unable to work at that time.

Petitioner testified the treatment of Dr. Singh has not been approved. Petitioner testified she had group insurance through the school district up to December but opted out of Cobra as she could not afford to pay for same.

Petitioner testified she did not receive any workers' compensation benefits after her termination on December 20, 2012. Petitioner testified her quality of life has changed. Petitioner testified she has pain particularly in the tail bone area, in the middle of the back, and the lower back bottom. She testified she feels pain all the time and does take Flexeril and Tylenol with codeine on occasion.

ON THE DISPUTED ISSUE (F) WHETHER PETITIONER'S CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE ACCIDENT OF JULY 11, 2012, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner testified she began her employment as a custodian for Respondent four years prior to arbitration. She did not seek treatment to her low back or cervical spine during that entire four year period. She worked for Respondent during that four year period without difficulty and without incident. This was un rebutted.

On July 11, 2012 she slipped and fell while mopping and landed on her buttocks. Accident was not in dispute. Since that date she has had unabated back and mid back pain. She has attempted physical therapy, modified duty, and injection therapy without relief. Petitioner testified she did not sustain any intervening accidents from the time of this injury to the date of arbitration.

The opinions of Dr. Kornblatt that she has reached maximum medical improvement from the effects of this injury and that any ongoing condition of ill-being is purely degenerative in nature and unrelated is not persuasive.

Even though an employee has a preexisting condition which may make him/her more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. Caterpillar Tractor v Industrial Comm'n, 92 Ill. 2d 30 (1989). Furthermore, proof of a prior state of health and a change following and continuing after an injury that necessitates off work and medical care may establish that a claimant's impaired condition was due to the injury. Navistar Intern. Transp. Corp. v Industrial Comm'n, 734 N.E. 2d 900 (1st Dist. 2000)

Following the accident Petitioner was referred by Rush Copley Medical Center, the employer's occupational facility, to Dr. Thomas McGivney who examined her and ordered an MRI. The MRI demonstrated a herniated disc at L5-S1. Dr. McGivney then referred Petitioner for injection treatment. Petitioner testified the injection treatment provided little relief at which time she sought a second opinion with Dr. Singh.

Dr. Singh's records reference the accident as the mechanism of Petitioner's injury, and after a consultation and review of the MRI scan, suggested surgical intervention as Petitioner exhausted conservative treatment consisting of lite duty, therapy, and epidural injection. The chain of events in this case warrants a finding of causal connection. See Peabody Coal Co. v. Industrial Comm'n, 571 N.E.2d 1182 (5th Dist. 1991) Also see Cook vs Industrial Comm'n, 176 Ill.App.3d 545 (1988)

The Arbitrator finds Petitioner's testimony that she still suffers from the effects of this injury to be credible and supported in the medical records. For this reason the Arbitrator finds a causal relationship between the accident of July 11, 2012 and Petitioner's current condition of ill-being as it relates to her low back, the diagnosis of an HNP at L5-S1, and the treatment she has received to date.

ON THE DISPUTED ISSUE (L.) TEMPORARY TOTAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent stipulated to accident. Respondent stipulated that Petitioner was temporary and totally disabled from August 29, 2012 through December 5, 2012 a period of 13-5/7 weeks. In Dr. Kornblatt's report dated December 3, 2012, he opined that Petitioner needed a 30 lb lifting restriction and that after 4 weeks of restricted duty she could return to work full duty. Dr. Kornblatt also opined that Petitioner was not at maximum improvement. Rather than allow Petitioner to continue working with these restrictions, Respondent terminated her on December 19, 2012.

The Arbitrator finds the opinions of Dr. Singh of Midwest Orthopedics at Rush, who examined Petitioner and opined she is in need of additional treatment and should be off work until such treatment is provided or explored is credible and reasonable and consistent with her diagnosis of HNP at L5-S1.

Petitioner testified she had no prior treatment to her low back during her four years as a custodian with Respondent. She had no symptomatic pre-existing condition and was not suffering from any pre-existing condition to her low back.

Since the accident Petitioner has undergone medical treatment by way of physical therapy, medication, epidural injection, MRI testing, modified duty and lifestyle modification, and now has a recommendation for surgery.

The uninterrupted chain of events since the injury date of July 12, 2012 supports a continuing disability based upon the preponderance of the evidence.

For this reason, the Arbitrator finds Petitioner temporarily and totally disabled from August 29, 2012 through December 6, 2012 and from December 19, 2013 through May 7, 2013, a period of 34 and 2/7 weeks.

Respondent shall receive a credit in the amount of \$5,819.95 for TTD benefits paid to date.

ON THE DISPUTED ISSUE (K.) PERSPECTIVE MEDICAL, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner seeks an order compelling Respondent to pay for the treatment recommended by Dr. Singh or at least accept a consultation with Dr. Singh to determine if he believes she is still a surgical candidate. (Arb. Ex 1)

The Arbitrator finds Petitioner did sustain an acute injury on July 11, 2012 and as of the date of Arbitration the preponderance of credible evidence suggests that she is still suffering from the effects of this injury.

For this reason the Arbitrator orders Respondent to pay for all reasonably related medical treatment that Dr. Singh opines is necessary based on a re-evaluation which Respondent is ordered to pay.

The Arbitrator finds the opinions of Dr. Singh more credible than Dr. Kornblatt based on the chain of events and the preponderance of evidence. If after a reevaluation with Dr. Singh, surgery to the L5-S1 disc is recommended, Respondent is hereby ordered pay all causally related and reasonable/necessary charges as per the applicable fee schedule.

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 SANGAMON

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

David Fitzpatrick,

Petitioner,

vs.

NO: 11 WC 31734

Illinois Central Management Services,

14IWCC0313

Respondent.

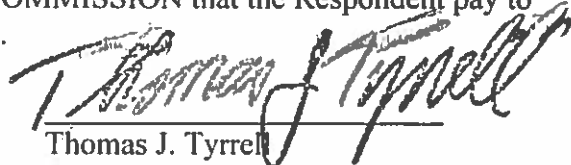
DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 6, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

DATED: APR 30 2014
 TJT:yl
 o 4/22/14
 51


 Thomas J. Tyrrell


 Michael J. Brennan


 Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FITZPATRICK, DAVID A

Employee/Petitioner

Case# **11WC031734**

IL CENTRAL MANAGEMENT SERVICES

Employer/Respondent

14IWCC0313

On 9/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1590 SGRO HANRAHAN & BLUE
GREGORY SGRO
1119 S 6TH ST
SPRINGFIELD, IL 62703

0639 ASSISTANT ATTORNEY GENERAL
CHARLENE C COPELAND
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0499 DEPT OF CENTRAL MGMT SERVICES
WORKMENS COMP RISK MGMT
801 S SEVENTH ST 6 MAIN
PO BOX 19208
SPRINGFIELD, IL 62794-9208

*CERTIFIED as a true and correct copy
pursuant to 820 ILCS 306/14*

SEP 6 2013



[Signature]
KIMBERLY A. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
 COUNTY OF Sangamon)

- ☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION

David A. Fitzpatrick

Petitioner

v.

Illinois Central Management Services

Respondent

Case # 11 WC 031734

Consolidated cases: N/A

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Springfield**, on **July 12, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
 B. ☐ Was there an employee-employer relationship?
 C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
 D. ☐ What was the date of the accident?
 E. ☐ Was timely notice of the accident given to Respondent?
 F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
 G. ☐ What were Petitioner's earnings?
 H. ☐ What was Petitioner's age at the time of the accident?
 I. ☐ What was Petitioner's marital status at the time of the accident?
 J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
 K. ☐ What temporary benefits are in dispute?
 ☐ TPD ☐ Maintenance ☐ TTD
 L. ☒ What is the nature and extent of the injury?
 M. ☐ Should penalties or fees be imposed upon Respondent?
 N. ☐ Is Respondent due any credit?
 O. ☐ Other _____

FINDINGS

On **January 14, 2010**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$58,135.50** the average weekly wage was **\$1,117.99**.

On the date of accident, Petitioner was **58** years of age, *married* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$0.00** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$0.00**.


Respondent is entitled to a credit of **\$0.00** in medical bills paid through its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

Petitioner failed to prove he sustained an accident on January 14, 2010 that arose out of and in the course of his employment with Respondent or that his conditions of ill-being in his hands/wrists and thumbs is causally related to his employment with Respondent. Petitioner's claim for compensation is denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

September 3, 2013
Date

SEP 6 - 2013

David Fitzpatrick v. Illinois Central Management Services, 11 WC 031734The Arbitrator finds:

Petitioner has worked for the State of Illinois in several capacities. Petitioner initially worked for Respondent in Data Entry and then went to work as a benefits administrator for the State Board of Education. Petitioner was in that position for approximately 10 years and 3 months before returning to Respondent in 2009 as a liability claims adjuster. Petitioner testified that he worked 7.5 hours per day for a total of 37.5 hours per week. Petitioner also worked overtime and in the last five years he believed he worked about 1 to 1.5 hours of overtime per day. As a claims adjuster, Petitioner reviewed new files/claims as they came in, entering notes into a system called Web Opus and making a determination as to whether the claim was compensable or not. Petitioner estimated he spent approximately 25% of his work day on the telephone and will cradle the phone and take notes on his keyboard.

Petitioner presented to his family physician, Dr. Steven Bowers, on January 13, 2010 with complaints of bilateral thumb pain. While he denied any specific injury he did report performing lots of computer work. According to a patient questionnaire completed by Petitioner, Petitioner had been experiencing symptoms, including pain, tingling, numbness, and cramping to both his thumbs and hands for over three years. Petitioner had also been diagnosed with diabetes. Dr. Bowers performed a physical examination and assessed Petitioner's condition as bilateral thumb tenosynovitis. Petitioner was told to use ice and given prescriptions for medications. (PX 1)

Thereafter, Petitioner was examined by Dr. Wottowa on February 3, 2010 regarding his bilateral thumb pain. Petitioner reported increasing pain over the base of the thumbs for the preceding 2-3 years and pain with gripping, grasping, and repetitive activity. Petitioner reported he had tried rigid shelf braces for awhile and found them helpful but they were no longer providing any relief. Petitioner also noticed cramping and shooting pain throughout his forearms and hands with occasional numbness and tingling to his second and third fingers on the right – frequently during the day and also at night. Petitioner's upper extremities were examined and x-rays were taken of Petitioner's thumbs with the latter showing advanced degenerative changes at the first CMC joint bilaterally and an old avulsion fracture at the left thumb proximal phalanx. Dr. Wottowa's diagnoses were carpal tunnel syndrome and localized primary osteoarthritis of the carpometacarpal joint (ie., bilateral basilar joint arthritis). He prescribed wrist splints and injected Petitioner's left basilar joint. Petitioner was asked to return in six weeks for further evaluation. (PX 3)

Petitioner followed up with Dr. Bowers on February 15, 2010. While the records are somewhat difficult to read, it appears a discussion was held regarding Dr. Wottowa's visit and Petitioner's thumb joints and the presence of carpal tunnel syndrome were also noted. (PX 1)

As instructed Petitioner returned to Dr. Wottowa on March 22, 2010 reporting a good result from the left-sided injection as he was continuing to experience a relief in his symptoms on that side. Petitioner also thought his right side was a "little bit" better than previously but he continued experiencing right thumb pain with pinching, gripping and grasping activities. The splints were also reportedly helping with

Petitioner's symptoms. Petitioner requested a right thumb injection which was performed. He was told to return as needed. (PX 3)

Petitioner returned to see Dr. Wottowa on May 12, 2010 – this time regarding his carpal tunnel. Petitioner reported he wore the braces at night but still experienced numbness and tingling during the night and it would wake him up. Petitioner found the left side worse than the right and believed his symptoms were interfering with both his work and activities of daily living. On examination, Dr. Wottowa noted a positive Phalen's on both hands and a positive Tinel's on the left. Petitioner demonstrated more pain along the median nerve in the midline of the left hand, just proximal to the carpal canal which was a bit of a change from prior exams. Petitioner also had occasional clicking and popping, especially for the left thumb more reflective of triggering than arthritis. Petitioner was scheduled for nerve testing with Dr. Gelber. (PX 3)

Petitioner underwent an emg/ncs with Dr. David Gelber on May 20, 2010, the results of which suggested very mild carpal tunnel syndrome. According to the history portion of Dr. Gelber's report Petitioner was complaining of tingling in his hands (primarily the second, third, and fourth fingers bilaterally) and performed a lot of keyboarding with his job. Petitioner had been wearing wrist splints with no noticeable improvement. (PX 2)

Thereafter Petitioner returned to Dr. Wottowa's office where they reviewed the nerve test results. Petitioner was still complaining of the right side and Dr. Wottowa suggested continued splinting and observation or surgery. Petitioner opted for surgery. (PX 3)

On July 22, 2010 Petitioner underwent a right carpal tunnel release and right thumb CMC joint arthrosis. (PX 3)

Petitioner followed up with Dr. Wottowa on July 30, 2010. Petitioner was doing well with no signs of infection and normal intrinsic hand function on the right. Petitioner was told he could return to work on a light duty basis with no lifting with the right upper extremity and no use of the right hand. Petitioner was noted to still have numbness and tingling on the left side but Petitioner wished to see how his right hand responded to surgery before proceeding with further treatment on the left. (PX 3)

As of August 25, 2010 Petitioner was still doing well and reporting only a little occasional discomfort over the palmar region. Petitioner still had left hand numbness and tingling. Petitioner was advised the palmar pain should continue to improve over the next couple of months. Petitioner wished to proceed with surgery on the left side. (PX 3)

Petitioner underwent a left carpal tunnel release and left thumb basilar joint arthrosis on September 21, 2010. (PX 3)

Post-operatively Petitioner did very well with complete resolution of his right-sided numbness and tingling and a little bit of palmar pain on the right hand. Petitioner was advised on October 1, 2010 that he could return to regular duty on "Monday" and then return one more time for a final check. (PX 3)

Dr. Wottowa examined Petitioner on October 25, 2010 noting that the carpal tunnel incisions had healed up beautifully and Petitioner denied any numbness or tingling and was "very happy." Petitioner did still have some positive crepitation, grinding, and discomfort; however, Petitioner did not wish to have any work done on his thumbs for as long as possible which the doctor considered reasonable. Petitioner was deemed at maximum medial improvement, fully released, and told to return at anytime if needed. (PX 3)

Petitioner's claim was denied by workers' compensation. Petitioner's bills were paid by his personal insurance. The bills are found in PX 4.

Petitioner signed his Application for Adjustment of Claim on August 9, 2011, alleging repetitive trauma to both hands in the form of carpal tunnel syndrome. (AX 2)

Dr. Wottowa was deposed on May 21, 2012. (PX 3) Dr. Wottowa is an orthopedic physician, board certified in hand surgery and general orthopaedics. Dr. Wottowa testified consistent with his office notes as discussed above and further rendered an opinion on causal connection based upon a hypothetical posed to him by Petitioner's attorney. In that hypothetical, Dr. Wottowa was asked to assume that Petitioner had a twenty year employment history of which he sat in front of a computer 80 to 85 percent of his 7.5 hour day while typing or keyboarding and that he also wrote, used a calculator, and used a phone. Based upon that hypothetical set of facts Dr. Wottowa testified that he could not opine that Petitioner's job duties caused his carpal tunnel syndrome. He further explained that the activities which aggravate carpal tunnel syndrome tend to be activities in which there is a significant degree of forced gripping in a flexed position. "So it's fairly thin to say that his symptoms of typing on a keyboard were a significant contributing factor for carpal tunnel syndrome. He does complain that doing these activities made his symptoms worse, but the degree of which aggravation to the point of treatment is difficult to determine." (PX 3, pp. 18-19) Dr. Wottowa further testified that there is no test that shows use of a keyboard or a computer significantly increases the instance of carpal tunnel syndrome or increased pressure in the carpal canal. (PX 3, p. 19) When asked to consider the legal standard of whether the carpal tunnel syndrome might or could have been aggravated or contributed to by the job duties, Dr. Wottowa testified, "By his description, they could have been aggravated." (PX 3, p. 19)

On cross-examination Dr. Wottowa testified that he was speculating when he stated "could have." (PX 3, p. 19) Dr. Wottowa acknowledged he and Petitioner never discussed Petitioner's job duties with any particularity nor was the doctor ever provided with a demands of the job for Petitioner. Other than the information in the hypothetical, Dr. Wottowa acknowledged he did not know how many hours per day Petitioner was on the keyboard or worked on a calculator. He further acknowledged diabetes (which Petitioner has) can aggravate carpal tunnel syndrome as can cigarette smoking (which Petitioner also had a history of).

Dr. Wottowa testified Petitioner is right-handed but had more left-sided symptoms. (PX 3, p. 12) .

On redirect examination Dr. Wottowa was asked if a twenty year history of keyboarding for thirty hours per week would aggravate carpal tunnel syndrome to which the doctor replied it would be hard to

measure that. Dr. Wottowa again noted the absence of studies to support such a conclusion even with common sense telling us that people who perform repetitive activities tend to have more episodes of carpal tunnel syndrome but there simply aren't any studies linking it – ie., no studies showing keyboarding is an extrinsic factor for carpal tunnel syndrome. (PX 3)

At arbitration Petitioner testified regarding his duties as a Liability Claims Adjuster. Petitioner testified that he typed on his computer for eighty to eight-five percent of his work day or about thirty two hours per week. He testified that his elbows and wrists were typically bent while typing. Petitioner demonstrated the position of his hands and arms while working which showed his elbows to be bent, his forearms angled upward and forward resting on the edge of his desk, and his wrists bent while typing. He further testified that he did not have an adjustable chair, a wrist pad, or ergonomic equipment of any kind. Petitioner testified that his symptoms were markedly increased by his work duties and they were particularly troublesome "by the end of the (work) day." He testified that his symptoms would ease, but not completely go away on weekends and holidays and when he did not engage in keyboarding. While Petitioner had only worked for Central Management Services for approximately one year prior to the occurrence date, he had been transferred from the State Board of Education, also a Division of the State of Illinois, where his job duties were the same for a period in excess of ten years. Petitioner stated that his keyboarding duties and the nature of his positioning was the same throughout that eleven year period. While Petitioner stated that he had developed symptoms in his hands and fingers over a period of time extending backward for several years, he testified that he first sought medical treatment regarding the same in January, 2010.

Petitioner testified to occasional achiness in his hands and thumbs. He described himself as a borderline diabetic and denied taking any medication for his condition. On cross-examination Petitioner testified he initially noticed his symptoms while working for the State Board of Education.

The Arbitrator concludes:

1.2. Accident and Causal Connection.

Petitioner failed to prove he sustained an accident on January 14, 2010 that arose out of and in the course of his employment with Respondent or that his condition of ill-being in his thumbs and hands/wrists is causally related to his employment duties for Respondent. The significance of January 14, 2010 is somewhat vague. Petitioner's initial visit with his personal physician, Dr. Bowers, was on January 13, 2010. However, Dr. Bower's billing statement reflects a payment being made by Petitioner on January 14, 2010. Petitioner testified he filed a report on the 14th; however, that report is not in the record. Rather than dwell on whether the manifestation date should be January 13 or January 14, the Arbitrator will focus on "causation" and "arising out of" as those seem to be the issues disputed between the parties.

At the outset the Arbitrator notes that Petitioner's Application for Adjustment of Claim makes no mention of Petitioner's thumbs. Petitioner failed to prove his bilateral basilar joint arthritis in his thumbs was causally related to his employment with Respondent. Similarly, Petitioner failed to prove his bilateral carpal tunnel syndrome was causally related to his employment with Respondent. This

14IWCC0313

conclusion is based upon Dr. Wottowa's testimony. Dr. Wottowa had no direct knowledge of the details of Petitioner's job and had to base his causation opinion on a hypothetical set of facts. Even then, he acknowledged he was speculating as to whether Petitioner's job aggravated his carpal tunnel syndrome. Petitioner's testimony regarding the onset of his complaints and their relatedness to his work duties was not corroborated by the medical records. They never had a discussion of Petitioner's job duties.

Petitioner's claim for compensation is denied. No benefits are awarded. All other issues are moot.

STATE OF ILLINOIS)
) SS.
 COUNTY OF MC LEAN)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Connie Wilson,

Petitioner,

vs.

NO: 10 WC 37841

14IWCC0314

The Salvation Army,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, permanent partial disability, penalties, credit, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 22, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0314

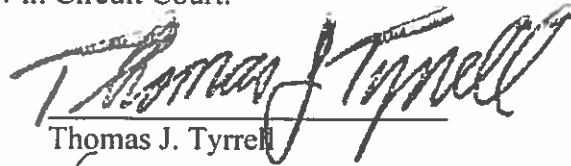
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 30 2014

TJT:yl

o 4/21/14

51


Thomas J. Tyrrell
Michael J. Brennan
Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WILSON, CONNIE

Employee/Petitioner

Case# **10WC037841**

THE SALVATION ARMY

Employer/Respondent

14IWCC0314

On 7/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0564 WILLIAMS & SWEE LTD
DIRK A MAY
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
SUYON FLOWERS
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
) SS.
 COUNTY OF MCLEAN)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION

CONNIE WILSON,
 Employee/Petitioner

Case # **10 WC 37841**

v.

Consolidated cases:

THE SALVATION ARMY,
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **STEPHEN MATHIS**, Arbitrator of the Commission, in the city of **BLOOMINGTON**, on **MAY 13, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☒ Is Respondent due any credit?
- O. ☐ Other

FINDINGS

On August 3, 2010, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$20,609.84; the average weekly wage was \$396.34.

On the date of accident, Petitioner was 50 years of age, *married* with 0 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits that include non-occupational indemnity disability benefits, for a total credit of \$0. Respondent shall be given a credit of \$3,635.20 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent is entitled to a credit of \$3,635.20 under Section 8(j) of the Act.

ORDER

No benefits are awarded.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

57 Mathis
Signature of Arbitrator

7-15-13
Date

JUL 22 2013

STATE OF ILLINOIS)
) SS
COUNTY OF MCLEAN)

14IWCC0314

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CONNIE WILSON,)	
)	
Petitioner,)	
)	
vs.)	IWCC 10 WC 37841
)	
THE SALVATION ARMY,)	
)	
Respondent.)	

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

This matter was tried before the Honorable Arbitrator Stephen Mathis on May 13, 2013, and proofs closed on May 13, 2013, pursuant to the Illinois Workers' Compensation Act. After reviewing all the evidence presented, the arbitrator hereby finds the following facts:

Accident

Petitioner, a 50 year old Kitchen Supervisor for The Salvation Army, alleges that on August 3, 2010, she injured her non-dominant left hand. Specifically, petitioner testified that while she was in the freezer moving boxes of frozen meat her arm began "tingling." Petitioner further testified that her arm started to hurt, became hot and she heard a "pop." Specifically, petitioner testified that she felt a "pop" in her left wrist and had an immediate onset of swelling, numbness and discoloration in her left hand. Petitioner gave no testimony of any pain in her right hand as a sequelae of her left hand injury.

Petitioner testified that she had been working in the freezer for approximately 25 minutes when she felt an onset of pain and her arm started to hurt. Petitioner testified that she had no problems with her left wrist or hand prior to working in the freezer. Petitioner testified that she initially sought treatment from Dr. Yee Chow and she was then referred to Dr. Newcomer for further treatment. Petitioner testified that she underwent surgery on June 29, 2012 for her left hand followed with physical therapy and several injections. She also testified that she wears a left wrist/hand brace and currently takes anti-inflammatories and pain medications.

Petitioner testified that the left hand symptoms she began to experience on August 3, 2010 continued until surgery on June 29, 2012, including numbness in three fingers, her

thumb and pain in the palm of her hand. Petitioner never testified that she had pain in her left arm or elbow.

14IWCC0314

Petitioner further testified that she had problems with grasping her fingers, food preparation, cutting and lifting large amounts of anything and that she usually serves 30 to 125 people even though she is working as a supervisor in the kitchen. Petitioner testified that her left wrist and hand hurt constantly all night and she would place ice and heat as well as use pain meds and she couldn't dress herself.

Petitioner testified that following the surgery on June 29, 2012, almost all her pain has gone but she still has some numbness, still currently is receiving injections, still has tingling off and on with lots of swelling after a day at work. She testified that she can touch but she cannot feel anything and still uses a brace when she works. She also testified that she does not wear her brace as much as she should and was not wearing the brace at trial. Finally, she testified that she takes Hydrocodone for pain three times a week. Finally, petitioner testified that she received other medical treatment for high blood pressure as well as her other medical conditions during the pendency of this claim from August 3, 2010 until approximately January 2013, when she underwent surgery for a non-occupational condition.

Prior Medical Treatment

Petitioner testified that she underwent right hand carpal tunnel surgery approximately ten years ago. Petitioner denied any bilateral carpal tunnel problems prior to the alleged date of accident of August 3, 2010.

The medical records show that prior to the alleged date of accident of August 3, 2010, petitioner sought medical treatment from her primary care physician, Dr. Richard Adams in October of 2008. Petitioner testified that she always gave her treaters a full complete history and she always told her doctors the truth about her injuries and complete medical history. The medical records show that on October 20, 2008, petitioner reported a history of bilateral carpal tunnel syndrome to Dr. Adams. (Rx. 8).

Further, petitioner testified that she had a previous workers' compensation claim regarding her left foot prior to the alleged date of accident. During the pendency of that claim, petitioner had an Independent Medical Examination with Dr. Kraft. (Rx. 4). In Dr. Kraft's IME report dated March 25, 2010, for a prior claim, petitioner reported that she had carpal tunnel surgery pending on her left hand.

Petitioner's History of Bilateral Carpal Tunnel Syndrome

Petitioner, who had been employed with The Salvation Army approximately one year prior to the alleged work injury on August 3, 2010, indicates that she felt an onset of pain in her left hand after moving packages of meat in and out of the freezer in preparation for kitchen duties. At trial, petitioner denied any history of bilateral carpal tunnel syndrome. However, the medical records from her own treater, specifically Dr. Adams

(Rx. 8), shows that petitioner has a history of bilateral carpal tunnel syndrome prior to the alleged date of accident on August 3, 2010.

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Further, during petitioner's IME with Dr. Kraft for an unrelated claim approximately 5 months before the alleged date of accident, petitioner mentioned that she had carpal tunnel release surgery pending for her left hand. (Rx. 4).

Medical Treatment/Current Medical Condition/Work Status

Petitioner had an MRI on August 24, 2010 that revealed evidence of a volar ganglion cyst, but otherwise there was no other significant findings and no "median nerve edema" (Px. 1, p. 24; Px. 2; Rx. Ex's 2, 3).

Petitioner underwent an Independent Medical Examination with Dr. John Fernandez on December 9, 2010 (Rx. 2). Dr. Fernandez stated that although petitioner's left hand numbness and tingling is probably carpal tunnel syndrome and her left wrist has a volar carpal ganglion cyst, it is not work related. Dr. Fernandez opined that petitioner's right hand and wrist pain had an unknown etiology. Specifically, Dr. Fernandez opined that petitioner may have "popped" the left wrist volar ganglion cyst which meant that she had a pre-existing left wrist volar carpal ganglion cyst which was not caused or aggravated by her job. He further opined that the vast majority of individuals who develop these injuries usually have no symptoms whatsoever.

Dr. Fernandez recommended a carpal tunnel injection to the left side. He also indicated that if the EMG study shows significant evidence of carpal tunnel syndrome, then consideration will be given to a carpal tunnel release surgery and that petitioner was not yet at maximum medical improvement regardless of the causality. He also recommended that petitioner have a left wrist volar carpal ganglion cyst excision at the same time as the carpal tunnel release surgery.

Dr. Fernandez opined that within a reasonable degree of medical certainty that most likely petitioner had a left wrist volar carpal ganglion cyst in addition to an underlying case of carpal tunnel syndrome. He further opined that she suddenly "popped" the volar ganglion cyst which caused an increase in some temporary symptoms but did not aggravate the underlying pathologic or physiologic condition.

Petitioner underwent an EMG on April 1, 2011, which revealed moderate to moderately severe left median neuropathy and very "mild" right neuropathy (Px. 2; Rx. 3).

In his IME addendum report dated June 13, 2012, Dr. Fernandez reviewed the EMG studies and noted that it revealed moderate to moderately severe left median neuropathy as well as "very mild" right median neuropathy and confirmed carpal tunnel syndrome. However, he maintained his position as to causality. He again opined that petitioner's carpal tunnel syndrome was not work related. (Rx. 3)

Petitioner continued to work for The Salvation Army up until her surgery on June 29, 2012 (Px. 5). Following surgery, petitioner underwent physical therapy. (Px. 4). Petitioner testified that she currently receives injections to her left hand.

Petitioner was off work on August 12, 2010 then from December 17, 2010 to December 20, 2010 and after surgery from June 29, 2012 until August 4, 2012. Petitioner currently works as a kitchen supervisor with The Salvation Army full duty with no restrictions.

CONCLUSIONS OF LAW

C. Did an accident occur that arose out of and in the course of petitioner's employment by respondent?

The arbitrator finds no accident occurred arising out of and in the course of petitioner's employment on August 3, 2010. In doing so, the arbitrator relies upon the preponderance of the credible evidence in the record, as cited above.

The petitioner must show by a preponderance of the evidence that she sustained an accident arising out of and in the course of her employment. The petitioner must present direct evidence explaining the cause of the accident, i.e. that her employment condition significantly contributed to the injury by increasing the risk of the affects of her alleged work injury. Petitioner can do this by presenting evidence such as witness testimony; medical testimony; etc. Cooley v. MB Financial Bank, 08 WC 30356 (2009) ("finding a petitioner's contemporaneous medical records must corroborate the petitioner's history").

The petitioner's testimony is not credible, as it is inconsistent with and contrary to the overwhelming medical evidence in the file. All of the medical records prepared prior to the alleged date of accident, indicates that petitioner had a history of bilateral carpal tunnel syndrome. There is an IME report by Dr. Kraft from March 25, 2010, which was approximately five months prior to the date of accident where he indicates that petitioner has carpal tunnel release surgery for her left hand "pending."

Dr. Fernandez also opined that he saw no evidence of significant pathology regarding petitioner's claim of "overuse as to her right wrist and hand, which, ironically, she never testified to right hand pain or injury at trial.

As for the left hand treatment, Dr. Fernandez recommended a carpal tunnel injection and a left wrist volar carpal ganglion cyst excision at the same time as the carpal tunnel release surgery. Dr. Newcomer did not administer an injection or excise the ganglion cyst at the time of the carpal tunnel release surgery. Ironically, petitioner still reports pain in her left hand, including numbness and tingling following surgery and Dr. Newcomer currently administers injections every three months.

In his report, Dr. Fernandez relied upon the MRI scan from August 24, 2010 that revealed evidence of a volar ganglion cyst, but otherwise there was no other significant findings and no "median nerve edema." He also relied upon an IME dated March 25, 2010

where it is noted that the past medical history had carpal tunnel surgery on the left side was "pending". It was also noted that petitioner had undergone a prior right carpal tunnel release ten or eleven years prior.

Thus, Dr. Fernandez's opinion that most likely petitioner had a left wrist volar carpal ganglion cyst that suddenly "popped" and only caused temporary symptoms should be deemed credible.

Petitioner's testimony that she did not reveal to either Dr. Richard Adams, her own treater and the IME Dr. Kraft, that she did not have any history of bilateral carpal tunnel syndrome nor did she have a history nor did she have left hand carpal tunnel release surgery pending prior to the alleged date of accident, is not credible. It is not credible for the very purpose that petitioner testified that she does not lift any dishes or does any cooking at home and only eats cereal. Petitioner is well aware that cooking; moving dishes, and putting items in and out of the freezer are normal activities of daily living. Thus, petitioner's testimony that she does not lift dishes or cook at home is not credible.

Petitioner testified that she is always truthful when speaking with her treaters. However, she denied informing her treaters that she had "bilateral" carpal tunnel syndrome, specifically she indicated that she was confused. Petitioner's testimony is simply not credible. First, why would Dr. Adams, her primary care provider, indicate in her medical records that she had a history of "bilateral" carpal tunnel syndrome if she did not provide him with that information? Additionally, petitioner told Dr. Kraft, respondent's IME in an unrelated workers' compensation claim, approximately five months before the alleged work accident that she had left carpal tunnel surgery "pending" at fact which she also denied at trial. How would Dr. Kraft know that petitioner had current problems with left hand carpal tunnel syndrome if she did not provide him with that information, especially since he was an expert for her alleged work related foot injury?

Petitioner's denial of providing these statements to her primary care provider and to Dr. Kraft is simply not credible.

Furthermore, petitioner's testimony that she had an onset of numbness and tingling in her left hand while moving kitchen items in the freezer is not an accident. Petitioner's testimony that she felt a pop in her left hand is consistent with Dr. Fernandez' opinion that she had a volar carpal ganglion cyst which pre-existed any alleged work accident. Thus, since the MRI report does reveal that there was a ganglion cyst and since petitioner still has the same identical symptoms following her carpal tunnel release surgery, then Dr. Fernandez' opinion regarding petitioner's alleged accident should be deemed credible.

Therefore, based on the preponderance of the credible evidence, the arbitrator finds that petitioner did not sustain an accident arising out of and in the course of her employment for the alleged work accident on August 3, 2010.

F. Is petitioner's current condition of ill being causally related to the injury?

Because the arbitrator finds no accident occurred for the alleged accident date of August 3, 2010, whether the petitioner's current condition of ill being is causally related to her employment does not need to be addressed.

Nonetheless, the arbitrator finds that even if an accident occurred, the petitioner's current condition of ill being is not causally related to her alleged work accident from August 3, 2010, as cited above.

In finding such, the arbitrator notes that the petitioner failed to present any medical testimony supporting such a causal connection between her current condition and the alleged work accident to her left hand on August 3, 2010. Although Dr. Newcomer testified that petitioner's condition is related to the alleged work accident, in his testimony, Dr. Newcomer testified that he never reviewed any of petitioner's prior medical records, nor did he review a copy of Dr. John Fernandez' December 9, 2010 IME report or the June 13, 2012 addendum report (Px. 1, pp. 45, 46). This supports the position that Dr. Newcomer never had knowledge that petitioner had alleged bilateral carpal tunnel syndrome prior to the alleged work accident. Further, Dr. Newcomer testified that he did not know the frequency, the flexion, the weight or force that was used by petitioner to carry/lift the boxes of meat (*Id.* at pp. 32, 33). Further, Dr. Newcomer testified that petitioner's age, arthritis, and prior carpal tunnel syndrome in her other hand could contribute to the current carpal tunnel syndrome condition (*Id.* at pp. 26, 35, 36). Finally, Dr. Newcomer testified in his deposition that even though he was aware that petitioner was a chef/kitchen supervisor, he never saw a copy of her job description or job requirements, or viewed a job video, nor did he have any personal knowledge of her work station or work requirements (*Id.* at pp. 29-31). Finally, Dr. Newcomer testified that he relied upon the EMG nerve conduction study, and admitted that it did not indicate when her carpal tunnel syndrome manifested, how long she had carpal tunnel syndrome and the cause of the carpal tunnel syndrome. (*Id.* at pp. 27, 42, 45)

Thus, since the medical records, specifically the MRI report confirmed what Dr. Fernandez opined in his IME report that petitioner had a volar ganglion cyst, thus her current condition of ill being is not causally related to any alleged employment related accident. The "pop" petitioner felt was a result of her volar ganglion cyst "popping" when she was moving items in and out of the freezer while at work on August 3, 2010.

J. Were the medical services that were provided to petitioner reasonable and necessary? Has respondent paid all appropriate charges for all reasonable and necessary medical services?

While the medical services provided to petitioner may have been reasonable and necessary to treat her left hand condition, the arbitrator finds that because no accident occurred arising out of and in the course of petitioner's employment, no medical benefits are due under the workers' compensation medical fee schedule. In addition, even if the arbitrator found that an accident occurred which arose out of and in the course of petitioner's employment, petitioner's current condition of ill being is not causally related to her employment. Therefore, no medical benefits are due under the workers' compensation medical fee schedule.

STATE OF ILLINOIS)
) SS.
 COUNTY OF PEORIA)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)(18))
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tamara Hopson,

Petitioner,

vs.

NO: 09 WC 29142

14IWCC0315

Caterpillar, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 15, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

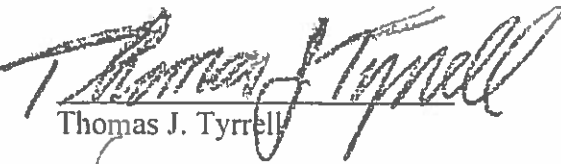
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

141WCC0315

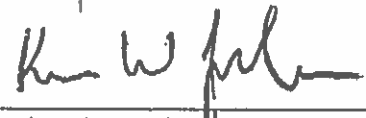
Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$25,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
TJT:yl
o 4/21/14
51

APR 30 2014


Thomas J. Tyrrell


Michael J. Brennan


Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HOPSON, TAMARA

Employee/Petitioner

Case# **09WC029142**

11WC010001

CATERPILLAR INC

Employer/Respondent

14IWCC0315

On 8/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1824 STRONG LAW OFFICES
TODD A STRONG
3100 N KNOXVILLE AVE
PEORIA, IL 61603

2994 CATERPILLAR INC
MARK FLANNERY
100 N E ADAMS ST
PEORIA, IL 61629-4340

STATE OF ILLINOIS)
)SS.
 COUNTY OF PEORIA)

- ☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

TAMARA HOPSON,
 Employee/Petitioner
 v.
CATERPILLAR, INC.,
 Employer/Respondent

Case # 09 WC 29142

Consolidated cases: 11 WC 10001.

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Peoria**, on **February 21, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
 B. ☐ Was there an employee-employer relationship?
 C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
 D. ☐ What was the date of the accident?
 E. ☐ Was timely notice of the accident given to Respondent?
 F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
 G. ☐ What were Petitioner's earnings?
 H. ☐ What was Petitioner's age at the time of the accident?
 I. ☐ What was Petitioner's marital status at the time of the accident?
 J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
 K. ☒ What temporary benefits are in dispute?
 ☐ TPD ☐ Maintenance ☒ TTD
 L. ☒ What is the nature and extent of the injury?
 M. ☐ Should penalties or fees be imposed upon Respondent?
 N. ☐ Is Respondent due any credit?
 O. ☐ Other: _____

FINDINGS

On July 2, 2009, Respondent *was* operating under and subject to the provisions of the Act.
 On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.
 On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.
 Timely notice of this alleged accident *was* given to Respondent.
 Petitioner's current condition of ill-being *is in part* causally related to the alleged accident.
 In the year preceding the injury, Petitioner earned \$29,020.00; the average weekly wage was \$580.40.
 On the date of accident, Petitioner was 31 years of age, *single* with three dependent children under 18.
 Petitioner *has in part* received all reasonable and necessary medical services.
 Respondent *has in part* paid all appropriate charges for all reasonable and necessary medical services.
 Respondent shall be given a credit of \$ 0.00 for TTD, \$ 0.00 for TPD, \$ 0.00 for maintenance, and \$5,042.31 for other benefits, for a total credit of \$5,042.31.
 Respondent is entitled to a credit of \$ 0.00 under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$386.93/week for 16 weeks, commencing July 23, 2009 through November 11, 2009, as provided in Section 8(b) of the Act.
 Respondent shall pay Petitioner permanent partial disability benefits of \$348.24/week for 12.3 weeks, because the injuries sustained caused the 6% loss of use of her *right hand*, as provided in Section 8(e) of the Act.
 Petitioner is now entitled to receive from Respondent compensation that has accrued from July 2, 2009 through February 21, 2013, and the remainder, if any, of the award is to be paid to Petitioner by Respondent in weekly payments.
 Respondent shall pay to Petitioner reasonable and necessary medical services of \$19,583.65, as provided in Sections 8(a) and 8.2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


 Signature of Arbitrator JOANN M. FRATIANNI

August 9, 2013
 Date

AUG 15 2013

F. Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner testified she was employed as a Material Specialist/Order Filler. Petitioner testified this job required her to assemble parts orders received for shipping. On July 2, 2009, she was assigned to a department called "System 76." In this department, she was provided with a large wheeled cart that was roughly in the form of an A-frame. Prior to 2010, these carts were made of steel, but in 2010 they were replaced with aluminum carts. Photographs of these carts were introduced into evidence. (Rx7) The carts have a stepladder on one side so that order fillers could climb them and pull parts out of bins set in racks. The racks were arranged in aisles. The opposite side of each cart had a platform. The order filler would place a pallet on that platform and then a tote to place parts in a cardboard box for shipping.

Mr. Dustin Wagoner, Respondent's facility manager, testified to the job description of Petitioner. Mr. Wagoner's testimony was in substantial agreement with Petitioner's testimony. Mr. Wagoner testified that upon receiving an order, Petitioner would build a shipping box using a staple gun to secure the bottom. The box was then placed on a pallet. The pallet was located on the platform in front of the cart. Once this task was performed, the order filler would travel down the aisle with the cart, pick parts out of the appropriate bins located on racks, and place them into the box. If an order was an emergency, the parts would be placed in a handled tote. Once an order was picked, the order filler would seal the box and place it on a conveyor for routing.

Petitioner testified the older steel carts were a lot heavier and more difficult to maneuver and push. Mr. Wagoner testified that a force study was performed which indicated that with an empty cart of the newer aluminum construction, 10 pounds of force was required to move it, 4 pounds once in motion. With 800 pounds of load, the standing still push force was 30-34 pounds, while the in motion force was 15-16 pounds. (Rx6) Mr. Wagoner testified these studies were also performed on older carts and they were comparable in terms of push and pull force. Mr. Wagoner further testified that over the 90 days prior to this Arbitration hearing, the average load of a cart was 173 pounds.

Petitioner testified that on July 2, 2009, she was pushing her cart up and down aisles filling orders when she experienced some pain in her right wrist. Petitioner reported to Respondent's medical department where she filled out an incident report indicating that she noticed pain in her wrist and a lump. (Rx1) A history was recorded at that time that Petitioner had been pushing a cart with an order weighing approximately 600 pounds when she noticed the pain and then noticed the lump on her wrist. (Rx1)

The following day, Petitioner sought treatment at the emergency room of Methodist Medical Center. Petitioner at that time complained of mild to moderate joint pain with movement of the dorsum of her right wrist. She also complained of a lump on the dorsum of her right wrist, but no mass was found during examination. (Rx7)

Petitioner then sought treatment with Dr. Daniel Hoffman on July 10, 2009. She complained of pain and swelling to her right wrist. Dr. Hoffman during examination found a firm moveable nodule on the dorsal aspect of the right wrist. He then referred her to see Dr. Schlamborg. (Px8)

Petitioner first saw Dr. Schlamborg on July 23, 2009. Petitioner at that time complained of swelling on the back of her right wrist, and denied numbness, tingling or paresthesias. Dr. Schlamborg after examination diagnosed a right wrist dorsal ganglion and felt there was a causal relationship between the right wrist symptoms, the ganglion cyst found, and the work duties. Dr. Schlamborg prescribed surgery and referred her to see Dr. Edward Trudeau for electronic diagnostic testing. (Rx3)

Dr. Trudeau performed this testing on August 4, 2009 and also noted the ganglion cyst. Dr. Trudeau also recorded complaints of pain in the right wrist radiating in the hand and up towards the elbow with numbness in the ring and little fingers and abnormal sensation in the dorsal aspect of the right hand web space. Dr. Trudeau noted weakness in the right forearm. Electrodiagnostic testing revealed ulnar neuropathy at the right wrist or Guyon's syndrome, and right radial sensory neuropathy or Wartenberg syndrome. Dr. Trudeau found no evidence of ulnar neuropathy at the elbow and no evidence of other entrapment neuropathy. (Px9)

Petitioner underwent surgery for removal of the ganglion cyst with Dr. Schlamborg on August 14, 2009. (Rx3)

Post surgery, Petitioner remained under the care of Dr. Schlamborg. Petitioner was released to full duty work on November 12, 2009. At that time, Dr. Schlamborg noted negative Tinel's sign at the carpal tunnel as well as the Guyon canal. Dr. Schlamborg also noted the diagnosis of Wartenberg and Guyon's syndromes made previously by Dr. Trudeau. (Rx3)

Petitioner then sought treatment with Dr. Blair Rhode, an orthopedic surgeon. Petitioner first saw Dr. Rhode on December 3, 2009 with complaints of right palmar wrist pain with radiation to the thumb, index and long finger. Dr. Rhode during his examination found a positive Tinel's sign at the right wrist but negative Tinel's at the cubital tunnel. Dr. Rhode found evidence of a positive EMG for carpal and cubital tunnel syndromes and felt the subjective and clinical evidence was consistent with right carpal tunnel syndrome, but not with cubital tunnel syndrome. Dr. Blair prescribed surgery. (Px13)

On January 5, 2010, Petitioner underwent surgery in the form of a right carpal tunnel release with Dr. Rhode. Post surgery, Dr. Blair indicated that Petitioner underwent Guyon's surgery.

Post surgery, Petitioner continued to experience discomfort with extension of the wrist and complaints of slight numbness. On April 15, 2010, Dr. Rhode noted Petitioner was three months post-Guyon's tunnel release and that she continued to complain of ring and little finger numbness. Dr. Rhode found positive cubital tunnel Tinel's sign and administered a steroid injection.

When seen on May 16, 2010, Dr. Rhode noted the complaints moved back to right palmar forearm pain with pushing a cart along with left wrist pain. On July 10, 2010, Dr. Rhode noted right ring and little finger numbness. Dr. Rhode prescribed a repeat EMG with Dr. Trudeau. Dr. Trudeau performed that test the same day and noted right cubital tunnel syndrome with no evidence of other entrapment neuropathy, either carpal tunnel syndrome, Guyon's canal syndrome or Wartenberg's syndrome. (Px10) Following this EMG, Dr. Rhode prescribed surgery.

On March 15, 2011, Dr. Rhode performed surgery in the form of a right cubital tunnel release, and also excised a recurrence of the dorsal ganglion cyst on the right wrist. (Px15)

Post surgery, Petitioner was released to full duty work on July 16, 2011. At that time Dr. Rhode felt she had reached maximum medical improvement. (Px13)

Dr. Rhode testified the right carpal and cubital tunnel syndromes were causally related to the job duties Petitioner performed on behalf of Respondent. Dr. Rhode testified he did not review the report of Dr. Trudeau's EMG testing, but relied upon the history Petitioner gave him and her accounts of the prior diagnosis. Dr. Rhode testified the work duties he was informed of consisted of packing boxes and pushing 1,200 pound carts all day. Dr. Rhode felt the history of complaints and clinical examination findings for Petitioner were a "moving target" that differed amongst the several prior treating physicians. Dr. Rhode testified that if he were to do it all over, he would have performed a diagnostic right carpal tunnel injection prior to surgery. (Px17) He also noted that in general, EMG testing was falsely positive 20% of the time and falsely negative 30% of the time.

Dr. John Mahoney testified by evidence deposition (Rx2) on behalf of Respondent. Dr. Mahoney, an orthopedic surgeon, examined Petitioner on September 7, 2010. Dr. Mahoney diagnosed a ganglion cyst and ulnar neuropathy, unsure if it was at the wrist or elbow. Dr. Mahoney felt the ganglion cyst was caused by the work activities performed for Respondent, but did not feel the ulnar neuropathy was so related. Dr. Mahoney also felt the work performed did not involve significant repetitive elbow flexion or positioning of extreme hyperflexion for long periods of time in ruling out ulnar compression of the elbow as being work related. Dr. Mahoney also felt there was little evidence that Petitioner had carpal tunnel syndrome, noting that both EMG's were negative for that condition.

Based upon the confusing evidence presented by the parties in this matter, the Arbitrator makes the following findings:

- (a) The diagnosed ganglion cyst and recurrent ganglion cysts that was aspirated on two occasions and required two surgeries, were causally related to this accidental injury;
- (b) That Petitioner failed to prove that the condition of right carpal tunnel syndrome is causally related to this accidental injury;
- (c) That Petitioner failed to prove that the condition of right cubital tunnel syndrome is causally related to this accidental injury;
- (d) That Petitioner failed to prove the ulnar neuropathy to the right elbow is causally related to this accidental injury.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Petitioner introduced into evidence the following unpaid medical bills that were incurred after this accidental injury (Px21):

AAOC Surgery Care Center Anesthesia	\$ 840.00
The Ambrose Group	\$ 2,532.69
Central Illinois Radiological Services	\$ 42.00
Dr. Daniel Hoffman	\$ 770.00
IPMR	\$ 1,367.00
Memorial Medical Center	\$ 1,319.00
Methodist Medical Center	\$ 873.00
North Shore Same Day Surgery	\$ 5,460.00
Orland Park Orthopedics	\$19,904.53
Orthopaedics of the North Shore	\$ 6,969.34
Quest Diagnostics	\$ 131.76
Bob Rady, Inc.	\$ 4,180.00
Dr. Jonathan Renkas	\$ 6,647.71
South Chicago Surgical Solutions	\$39,090.80
Dr. Edward Trudeau	\$ 7,960.00

These charges total \$98,170.83.

See findings of this Arbitrator in "F" above.

14IWCC0315

Based upon said findings, the Arbitrator finds following medical bills represent reasonable and necessary medical care and treatment that is causally related to this accidental injury, and awards those charges to Petitioner, subject to the medical fee schedule as created by the Act. The charges so awarded are as follows:

AAOC Surgery Center Anesthesia	\$ 840.00
Dr. Daniel Hoffman	\$ 770.00
Methodist Medical Center	\$2,192.00
North Shore Same Day Surgery	\$5,460.00
Orthopaedics of the North Shore	\$6,969.34
Quest Diagnostics	\$ 131.76
South Chicago Surgical Solutions	\$1,853.55
IPMR	\$1,367.00

Total medical charges so awarded: \$19,583.65.

All other charges not so awarded by this Arbitrator are hereby denied for the reasons cited in "F" above.

K. What temporary benefits are in dispute?

See findings of this Arbitrator in "F" above.

Petitioner claims that as a result of this accidental injury, she became temporarily and totally disabled from work commencing July 21, 2009 through January 18, 2010, and again from March 15, 2011 through June 19, 2011, and is entitled to receive benefits from Respondent for those periods of time.

The Arbitrator finds that Petitioner was temporarily and totally disabled only for the period of July 23, 2009 through November 11, 2009, based on the prescription by Dr. Schlamberg for that period of time for treatment of the ganglion cyst including surgery. Petitioner failed to prove she missed some time from work for removal of the recurrent ganglion cyst by Dr. Rhode.

Based upon the above, the Arbitrator finds that as a result of this accidental injury, Petitioner became temporarily and totally disabled from work commencing July 23, 2009 through November 11, 2009, and is entitled to receipt of benefits from Respondent for this period of time. All other claims of temporary total disability made by Petitioner in this matter are hereby denied.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "F" above.

Petitioner is still working for Respondent at her regular job of order filler. Petitioner testified that she experiences pain occasionally while pushing the carts that flares through her right wrist. Petitioner testified to experiencing difficulty picking up and handling pots and pans at home. Dr. Rhodes last saw Petitioner on July 13, 2011. At that time he indicated an inability to elicit pain from the right wrist during examination and found her to be at maximum medical improvement. (Px13)

Arbitration Decision
09 WC 29412
Page Seven

14IWCC0315

Based upon the above, the Arbitrator finds the condition of ill-being to the ganglion cyst condition to be permanent in nature and awards compensation for permanent partial disability based only upon that condition in this matter.

STATE OF ILLINOIS)
) SS.
 COUNTY OF PEORIA)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tamara Hopson,

Petitioner,

vs.

NO: 11 WC 10001

Caterpillar, Inc.,

14IWCC0316

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 15, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 30 2014
 TJT:yl
 o 4/21/14
 51


 Thomas J. Tyrrell


 Michael J. Brennan


 Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HOPSON, TAMARA

Employee/Petitioner

Case# **11WC010001**

09WC029142

14IWCC0316

CATERPILLAR INC

Employer/Respondent

On 8/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1824 STRONG LAW OFFICES
TODD A STRONG
3100 N KNOXVILLE AVE
PEORIA, IL 61604

2994 CATERPILLAR INC
MARK FLANNERY
100 N E ADAMS ST
PEORIA, IL 61629-4340

STATE OF ILLINOIS)
)SS.
 COUNTY OF PEORIA)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

TAMARA HOPSON,
 Employee/Petitioner
 v.
CATERPILLAR, INC.,
 Employer/Respondent

Case # 11 WC 10001

Consolidated cases: 09 WC 29142

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Peoria**, on **February 21, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other: _____

FINDINGS

On December 15, 2010, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this alleged accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the alleged accident.

In the year preceding the alleged injury, Petitioner earned \$22,672.00; the average weekly wage was \$596.63.

On the date of alleged accident, Petitioner was 32 years of age, *single* with three dependent children under 18.

Petitioner *has not* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$ 0.00 for TTD, \$ 0.00 for TPD, \$ 0.00 for maintenance, and \$1,680.77 for other benefits, for a total credit of \$1,680.77.

Respondent is entitled to a credit of \$ 0.00 under Section 8(j) of the Act.

ORDER

Petitioner failed to prove that she sustained accidental injuries arising out of and in the course of her employment by Respondent on December 15, 2010.

Petitioner further failed to prove that the condition of ill-being alleged is causally related to any work activities performed on behalf of this Respondent.

All claims for compensation are thus, hereby denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator JOANN M. FRATIANNI

August 9, 2013
Date

AUG 15 2013

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

F. Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner testified she was employed as a Material Specialist/Order Filler. Petitioner testified this job required her to assemble parts orders received for shipping. On July 2, 2009, which concerns the subject matter of the companion file no. 09 WC 29142, which was consolidated and heard with this matter, she was assigned to a department called "System 76." In this department, she was provided with a large wheeled cart that was roughly in the form of an A-frame. Prior to 2010, these carts were made of steel, but in 2010 they were replaced with aluminum carts. Photographs of these carts were introduced into evidence. (Rx7) The carts have a stepladder on one side so that order fillers could climb them and pull parts out of bins set in racks. The racks were arranged in aisles. The opposite side of each cart had a platform. The order filler would place a pallet on that platform and then a tote to place parts in a cardboard box for shipping.

Mr. Dustin Wagoner, Respondent's facility manager, testified to the job description of Petitioner. Mr. Wagoner's testimony was in substantial agreement with Petitioner's testimony. Mr. Wagoner testified that upon receiving an order, Petitioner would build a shipping box using a staple gun to secure the bottom. The box was then placed on a pallet. The pallet was located on the platform in front of the cart. Once this task was performed, the order filler would travel down the aisle with the cart, pick parts out of the appropriate bins located on racks, and place them into the box. If an order was an emergency, the parts would be placed in a handled tote. Once an order was picked, the order filler would seal the box and place it on a conveyor for routing.

Petitioner testified the older steel carts were a lot heavier and more difficult to maneuver and push. Mr. Wagoner testified that a force study was performed which indicated that with an empty cart of the newer aluminum construction, 10 pounds of force was required to move it, 4 pounds once in motion. With 800 pounds of load, the standing still push force was 30-34 pounds, while the in motion force was 15-16 pounds. (Rx6) Mr. Wagoner testified these studies were also performed on older carts and they were comparable in terms of push and pull force. Mr. Wagoner further testified that over the 90 days prior to this Arbitration hearing, the average load of a cart was 173 pounds.

Petitioner testified that on July 2, 2009, she was pushing her cart up and down aisles filling orders when she experienced some pain in her right wrist. Petitioner reported to Respondent's medical department where she filled out an incident report indicating that she noticed pain in her wrist and a lump. (Rx1) A history was recorded at that time that Petitioner had been pushing a cart with an order weighing approximately 600 pounds when she noticed the pain and then noticed the lump on her wrist. (Rx1)

The following day, Petitioner sought treatment at the emergency room of Methodist Medical Center. Petitioner at that time complained of mild to moderate joint pain with movement of the dorsum of her right wrist. She also complained of a lump on the dorsum of her right wrist, but no mass was found during examination. (Rx7)

Petitioner then sought treatment with Dr. Daniel Hoffman on July 10, 2009. She complained of pain and swelling to her right wrist. Dr. Hoffman during examination found a firm moveable nodule on the dorsal aspect of the right wrist. He then referred her to see Dr. Schlamborg. (Px8)

Petitioner first saw Dr. Schlamborg on July 23, 2009. Petitioner at that time complained of swelling on the back of her right wrist, and denied numbness, tingling or paresthesias. Dr. Schlamborg after examination diagnosed a right wrist dorsal ganglion and felt there was a causal relationship between the right wrist symptoms, the ganglion cyst found, and the work duties. Dr. Schlamborg prescribed surgery and referred her to see Dr. Edward Trudeau for electronic diagnostic testing. (Rx3)

Dr. Trudeau performed this testing on August 4, 2009 and also noted the ganglion cyst. Dr. Trudeau also recorded complaints of pain in the right wrist radiating in the hand and up towards the elbow with numbness in the ring and little fingers and abnormal sensation in the dorsal aspect of the right hand web space. Dr. Trudeau noted weakness in the right forearm. Electrodiagnostic testing revealed ulnar neuropathy at the right wrist or Guyon's syndrome, and right radial sensory neuropathy or Wartenberg syndrome. Dr. Trudeau found no evidence of ulnar neuropathy at the elbow and no evidence of other entrapment neuropathy. (Px9)

Petitioner underwent surgery for removal of the ganglion cyst with Dr. Schlamborg on August 14, 2009. (Rx3)

Post surgery, Petitioner remained under the care of Dr. Schlamborg. Petitioner was released to full duty work on November 12, 2009. At that time, Dr. Schlamborg noted negative Tinel's sign at the carpal tunnel as well as the Guyon canal. Dr. Schlamborg also noted the diagnosis of Wartenberg and Guyon's syndromes made previously by Dr. Trudeau. (Rx3)

Petitioner then sought treatment with Dr. Blair Rhode, an orthopedic surgeon. Petitioner first saw Dr. Rhode on December 3, 2009 with complaints of right palmar wrist pain with radiation to the thumb, index and long finger. Dr. Rhode during his examination found a positive Tinel's sign at the right wrist but negative Tinel's at the cubital tunnel. Dr. Rhode found evidence of a positive EMG for carpal and cubital tunnel syndromes and felt the subjective and clinical evidence was consistent with right carpal tunnel syndrome, but not with cubital tunnel syndrome. Dr. Blair prescribed surgery. (Px13)

On January 5, 2010, Petitioner underwent surgery in the form of a right carpal tunnel release with Dr. Rhode. Post surgery, Dr. Blair indicated that Petitioner underwent Guyon's surgery.

Post surgery, Petitioner continued to experience discomfort with extension of the wrist and complaints of slight numbness. On April 15, 2010, Dr. Rhode noted Petitioner was three months post-Guyon's tunnel release and that she continued to complain of ring and little finger numbness. Dr. Rhode found positive cubital tunnel Tinel's sign and administered a steroid injection.

When seen on May 16, 2010, Dr. Rhode noted the complaints moved back to right palmar forearm pain with pushing a cart along with left wrist pain. On July 10, 2010, Dr. Rhode noted right ring and little finger numbness. Dr. Rhode prescribed a repeat EMG with Dr. Trudeau. Dr. Trudeau performed that test the same day and noted right cubital tunnel syndrome with no evidence of other entrapment neuropathy, either carpal tunnel syndrome, Guyon's canal syndrome or Wartenberg's syndrome. (Px10) Following this EMG, Dr. Rhode prescribed surgery.

On March 15, 2011, Dr. Rhode performed surgery in the form of a right cubital tunnel release, and also excised a recurrence of the dorsal ganglion cyst on the right wrist. (Px15)

Post surgery, Petitioner was released to full duty work on July 16, 2011. At that time Dr. Rhode felt she had reached maximum medical improvement. (Px13)

Dr. Rhode testified the right carpal and cubital tunnel syndromes were causally related to the job duties Petitioner performed on behalf of Respondent. Dr. Rhode testified he did not review the report of Dr. Trudeau's EMG testing, but relied upon the history Petitioner gave him and her accounts of the prior diagnosis. Dr. Rhode testified the work duties he was informed of consisted of packing boxes and pushing 1,200 pound carts all day. Dr. Rhode felt the history of complaints and clinical examination findings for Petitioner were a "moving target" that differed amongst the several prior treating physicians. Dr. Rhode testified that if he were to do it all over, he would have performed a diagnostic right carpal tunnel injection prior to surgery. (Px17) He also noted that in general, EMG testing was falsely positive 20% of the time and falsely negative 30% of the time.

Dr. John Mahoney testified by evidence deposition (Rx2) on behalf of Respondent. Dr. Mahoney, an orthopedic surgeon, examined Petitioner on September 7, 2010. Dr. Mahoney diagnosed a ganglion cyst and ulnar neuropathy, unsure if it was at the wrist or elbow. Dr. Mahoney felt the ganglion cyst was caused by the work activities performed for Respondent, but did not feel the ulnar neuropathy was so related. Dr. Mahoney also felt the work performed did not involve significant repetitive elbow flexion or positioning of extreme hyperflexion for long periods of time in ruling out ulnar compression of the elbow as being work related. Dr. Mahoney also felt there was little evidence that Petitioner had carpal tunnel syndrome, noting that both EMG's were negative for that condition.

Petitioner in this particular case is claiming an injury date of December 15, 2010, basically from performing the same types of tasks for Respondent as in the companion case, 09 WC 29142, which was consolidated and heard with this matter. There is no real evidence of an injury occurring to Petitioner at work on December 15, 2010 in this matter.

Based upon the above, the Arbitrator finds that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment by Respondent on December 15, 2010.

Based further upon the above, the Arbitrator finds that Petitioner failed to prove that her current conditions of ill-being as alleged above are causally related to any employment activities performed on behalf of this Respondent.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made by Petitioner for medical expenses in this matter are hereby denied.

K. What temporary benefits are in dispute?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made by Petitioner for temporary total disability benefits in this matter are hereby denied.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made by Petitioner for permanent partial disability benefits in this matter are hereby denied.

STATE OF ILLINOIS)
) SS.
 COUNTY OF PEORIA)

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
 Richard Paquin,
 Petitioner,
 vs.

14IWCC0317
 NO: 10 WC 43127

Steak N Shake,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, medical expenses permanent partial disability, causal connection and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 19, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.


Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$22,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

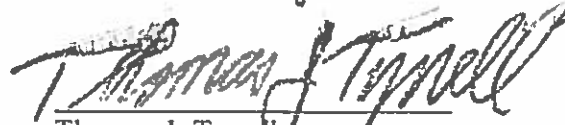
DATED: **APR 30 2014**


KWL/vf

O-4/22/14

42


 Kevin W. Lamborn


 Thomas J. Tyrrell


 Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0317

PAQUIN, RICHARD

Employee/Petitioner

Case# **10WC043127**

STEAK N SHAKE

Employer/Respondent

On 11/19/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1824 STRONG LAW OFFICES
SEAN OSWALD
3100 N KNOXVILLE AVE
PEORIA, IL 61603

1832 ALHOLM MONAHAN KLAUKE ET AL
GEORGE F KLAUKE JR
221 N LASALLE ST SUITE 450
CHICAGO, IL 60601

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0317

RICHARD PAQUIN,
Employee/Petitioner

Case # 10 WC 43127

v.

Consolidated cases: _____

STEAK N SHAKE,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **10/24/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

14IWCC0317

FINDINGS

On **10/26/10**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being as it relates to his bilateral hands and bilateral elbows *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$16,990.48**; the average weekly wage was **\$326.79**.

On the date of accident, Petitioner was **57** years of age, *single* with **no** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$00.00** for TTD, **\$00.00** for TPD, **\$00.00** for maintenance, and **\$00.00** for other benefits, for a total credit of **\$00.00**.

Respondent is entitled to a credit of **\$00.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$220.00/week for 23 weeks, commencing 12/15/10 through 5/24/11, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services related to petitioner's bilateral hands and bilateral elbows, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$220.00/week for 20.5 weeks, because the injuries sustained caused the 10% loss of the right hand, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$220.00/week for 20.5 weeks, because the injuries sustained caused the 10% loss of the left hand, as provided in Section 8(e) of the Act.

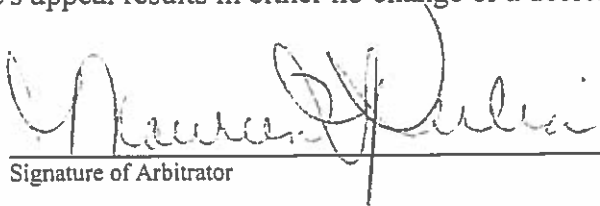
Respondent shall pay Petitioner permanent partial disability benefits of \$220.00/week for 18.975 weeks, because the injuries sustained caused the 7.5% loss of the right arm, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$220.00/week for 18.975 weeks, because the injuries sustained caused the 7.5% loss of the left arm, as provided in Section 8(e) of the Act.

14IWCC0317

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

11/12/13
Date

ICArbDec p. 2

NOV 19 2013

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 57 year old cook, alleges that he sustained accidental injuries to his bilateral hands and elbows, and his right shoulder due to repetitive work activities that arose out of and in the course of his employment by respondent that manifested itself on 10/26/10. Petitioner worked for respondent from May 2009 to on or about 11/14/10. Petitioner testified that he worked five days a week for a total of approximately 50 hours.

Petitioner testified that his duties involved cooking and helping with anything else that needed to be done in the store. Petitioner testified that he performed stocking duties every day. He stated that when he arrived at the restaurant in the morning, whatever was not on the line, he would go to the cooler and get it. He would then put what he needed from the walk-in cooler into the cooler near the cooking line. Petitioner testified that he would also need to lift a pot of chili, at or above shoulder level, that held 30 gallons and was 14 inches in diameter. He testified that the pot of chili weighed 70 to 80 pounds. He testified that he would take it from the mixing stand and carry it 4 feet to the steam table. Petitioner testified that he also moved boxes of french fries weighing 30 pounds and 25 pounds of meat at waist level and set them on the shelf, and put them in the coolers. To put these items in the cooler petitioner would lean over and extend his arms.

When petitioner was working the grill he would place the hamburgers on the grill and with a spatula press them down. He would then use the spatula to flip the burgers. After the burgers were cooked he would scrape the grill clean before he started another set of patties. Petitioner testified that the hamburgers that he grilled were preformed. As the burgers would heat up he would mash them down with the spatula and the fork until they were paper thin. Petitioner testified that this task was not really difficult unless the hamburgers had not been thoroughly thawed out. Petitioner would use both hands to perform this task. Petitioner would flex, extend, and twist his wrists while performing this task. During an average shift petitioner would cook eight pans of burgers. Each pan contained 140 burgers. On average petitioner testified that he cooked 1000 hamburgers per shift.

Petitioner testified that when he was grilling hamburgers he would hold the tools in his right hand. To clean the grill petitioner would use both hands and a lot of force. Petitioner cleaned the grill approximately 3 times a day, and scraped the grill between each run of burgers. Petitioner testified that there were four runs of burgers on one grill, and two runs on the other grill. The busier it was, the faster the petitioner would perform these tasks. Petitioner testified that after about 10 months to a year of performing these tasks his hands and arms began to bother him. Petitioner testified that scraping the grill, flipping the burgers, and smashing the burgers hurt his hands. He further testified that scraping of the grill and lifting bothered his right shoulder.

Petitioner testified that he was fired by respondent after he called off sick due to the pain in his arm. He stated that he had gone to work and noticed that his name was off the shift list. Petitioner stated that he was not given any written or verbal warnings at that time by the general manager. Petitioner was a little bit fuzzy as to the actual dates of employment with respondent.

On 10/23/10 petitioner completed a job description form for his attorney. He noted that the constant repetition of the grill work, heavy lifting of supplies and rotating stock in the walk-in cooler and freezer caused or contributed to this condition. Petitioner estimated that the number of repetitions he used his hands and arms per minute was 50, per hour was 3000, and per day was 5000 to 6000.

On 10/26/10 petitioner signed his Application for Adjustment of Claim. On 11/4/10 petitioner's Application for Adjustment of Claim was filed. He alleged a repetitive trauma injury to both hands and arms/shoulders.

Petitioner testified that he was referred for treatment with Dr. Hoffman by his attorney. On 11/2/10 petitioner presented to Dr. Hoffman. He gave a history of working for respondent for the last two years doing repetitive work. He complained of pain in both arms radiating up to the elbows bilaterally over the last month. Dr. Hoffman assessed bilateral carpal tunnel syndrome and an EMG and NCV were ordered. Petitioner followed up with Dr. Hoffman on 11/9/10. He continued to have pain in both arms radiating up to the elbows.

On 11/14/10 petitioner completed a second job description form for his attorney. Petitioner identified repetitive actions consisting of pushing constantly with the shoulder, arm, and hand as what caused or contributed to this condition. On this form he estimated the number of repetitions he used his hands and arms was 1 to 24 per minute, 700 to 800 per hour and 2000 to 3000 per day.

On 11/18/10 petitioner underwent an EMG and NCV by Dr. Trudeau. He gave a history of doing repetitive motion work with constant grilling and cleaning of the grill with his upper extremities. The results revealed bilateral carpal tunnel syndrome, moderately severe on either side, right greater than the left. No evidence of cubital tunnel syndrome was noted.

On 11/26/10 petitioner followed up with Dr. Hoffman. His condition remained unchanged. Dr. Hoffman's diagnosis also remained the same. Petitioner was referred to Dr. Rhode.

On 12/18/10 petitioner presented to Dr. Rhode for consultation of his right shoulder pain, elbow pain, and wrist pain. He reported that his symptoms were secondary to an injury at work. Petitioner complained of medial elbow pain with radiation to the ring and little finger. He also complained of palmar wrist pain with radiation to the thumb and index fingers. He described his shoulder pain as lateral with weakness to

overhead. He gave a history of being a cook at Steak and Shake until two weeks ago. He stated that he was terminated due to calling in on a Sunday. He stated that he had worked for respondent for approximately 2 years. He reported that he told his general manager about his symptoms about two and half months ago. He stated that his symptoms began about 6 to 8 months ago. He stated that his job duties required him to perform a significant amount of repetitive activity while cooking. Petitioner denied any prior symptomatology, history of diabetes, or thyroid dysfunction. Dr. Rhode examined petitioner and noted that his subjective and objective findings were consistent with right carpal and cubital tunnel syndrome. He noted that the EMG was positive for bilateral carpal tunnel syndrome with negative findings for cubital tunnel syndrome. Dr. Rhode was of the opinion that petitioner did not complain or demonstrate objective findings consistent with left carpal tunnel syndrome that day. He noted that petitioner told him that he was required to perform a highly repetitive and manual position while working as a grill cook over the course of two years. He noted that petitioner also demonstrated rotator cuff symptomatology with supraspinatus isolation strength loss. Dr. Rhode recommended an MRI of the right shoulder. He began treating petitioner's right carpal and cubital tunnel syndrome conservatively. He injected the right carpal tunnel. Petitioner experienced temporary relief with this injection.

On 12/20/10 Dr. Hoffman drafted a note that indicated that petitioner was able to actively search for work. On 12/29/10 Dr. Rhode placed petitioner on modified to sedentary work. On 1/12/11 Dr. Brody had petitioner off work.

On 1/16/11 petitioner returned to Dr. Rhode. He stated that he was unwilling to live with his current symptomatology. Dr. Rhode discussed that the EMG was negative for cubital tunnel syndrome, but that EMG correlation with cubital tunnel syndrome is not as accurate as it is for carpal tunnel syndrome. Petitioner expressed that he wished to proceed with surgical intervention.

On 2/10/11 petitioner underwent a right carpal and cubital tunnel release performed by Dr. Rhode. Petitioner followed-up postoperatively with Dr. Rhode. On 3/29/11 petitioner underwent left open carpal and cubital tunnel release. Again, he followed up postoperatively with Dr. Rhode. Petitioner's postoperative treatment included physical therapy. On 4/20/11 Dr. Rhode's was of the opinion that petitioner was doing well following his releases.

On 5/11/11 petitioner underwent an MRI of the right shoulder. The impression was proximal tendinosis of the biceps tendon with findings highly suspicious for slap tear; mild atrophy of the teres minor muscle and inferior glenohumeral ligament sprain suggestive of deep soft tissue injury; AC joint degenerative change; and rotator cuff tendinosis without rotator cuff tear. On 5/18/11 Dr. Rhode was of the opinion that petitioner was capable of working light duty. By 6/1/11 Dr. Rhode had again taken petitioner off work.

On 7/12/11 petitioner underwent a right shoulder video assisted subacromial decompression, arthroscopic rotator cuff repair, super scapular nerve block, and application of cold therapy. This procedure was performed by Dr. Rhode. Petitioner's postoperative diagnosis was right shoulder supraspinatus rotator cuff tear. Petitioner followed up postoperatively with Dr. Rhode. This treatment included physical therapy.

Petitioner's range of motion of his right shoulder was poor. On 11/30/11 Dr. Rhode recommended proceeding with the manipulation. His working diagnosis was postoperative arthrofibrosis process status post rotator cuff repair. On 2/7/12 Dr. Rhode performed a manipulation under anesthesia. Petitioner followed up post operatively with Dr. Rhode. This treatment included aggressive physical therapy.

On 2/24/12 petitioner presented to Dr. Newcomer for a Section 12 examination at the request of respondent. Dr. Newcomer noted that petitioner stated he was a line cook with respondent and about a year and a half into his employment started having pains in his wrist that would go to his elbows. He ultimately then had a sharp pain in his shoulder. Petitioner stated that he was let go by Steak and Shake in November 2010 for calling in. Petitioner stated that he sought out the assistance of a lawyer in order to get referred to a doctor and get an idea about what could be done with his arms. Dr. Newcomer did not have the operative reports to review. When asked about his current state of affairs petitioner stated that he was much better. He reported that he had excellent range of motion, good strength, and felt like he could return to work without much problem. He complained of occasional discomfort from the anterior aspect of the shoulder extending down along the biceps.

Following an examination, Dr. Newcomer addressed specific questions that were asked of him by respondent. Dr. Newcomer noted that prior to his work with respondent petitioner was a truck driver for eight years, and this would be considered a high demand job. He also noted that petitioner was also a carpenter for a long time prior to that, and that this was another occupation that would cause the propensity to develop these compressive neuropathies. Dr. Newcomer opined that he was not convinced that petitioner's job for respondent was causally related to the diagnosis, and that he never sought any occupational health physicians opinions before going to an attorney. He believed this was suspect for secondary gain. Dr. Newcomer was of the opinion that there was no specific incident that occurred that could have caused petitioner's shoulder rotator cuff tear. Dr. Newcomer admitted that he had not had an opportunity to review the MRI report for the right shoulder. He was also of the opinion that petitioner could work and had reached maximum medical improvement. He was of the opinion that petitioner was able to work full duty without restrictions. Dr. Newcomer was of the opinion that petitioner's medical treatment was reasonable and necessary, even though it was not related to his work activities. Dr. Newcomer stated that he was having a problem with regards to pinning petitioner's problems

completely and solely upon respondent as a contributing factor, and his decision to seek legal counsel prior to medical attention.

On 3/21/12 petitioner followed up with Dr. Rhode. Dr. Rhode was of the opinion that petitioner was plateauing. At that point he allowed petitioner to work at the medium level with overhead limits of 10 pounds frequently, 20 pounds maximum.

Petitioner continued to follow up with Dr. Rhode through 4/18/12. On that date petitioner continued to complain of moderate symptomatology. With respect to his wrist pain Dr. Rhode was of the opinion that petitioner had plateaued. He gave him restrictions for modified medium heavy duty work with an overhead restriction of 25/35 pounds. He was of the opinion that these restrictions were permanent. Dr. Rhode was of the opinion that he believed petitioner was at maximum medical improvement, and release him on an as needed basis. He further indicated that the petitioner required future oral medications.

On 8/6/12 Dr. Newcomer drafted an addendum report after having had the opportunity to look at the MRI of petitioner's shoulder. He was of the opinion that these findings could certainly be seen routinely in a man of petitioner's age. Dr. Newcomer was also of the opinion that the acromioclavicular joint degenerative change seen on the MRI certainly could have caused some impingement based on arthritis alone, rather than any occupation related repetitive trauma. Dr. Newcomer reiterated that he did not believe the shoulder condition was causally related to petitioner's job for respondent.

On 10/24/12 the evidence deposition of Dr. Rhode was taken on behalf of petitioner. Dr. Rhode was of the opinion that even though petitioner's diagnostic tests did not show any evidence of cubital tunnel syndrome, petitioner's physical findings were consistent with the diagnosis of cubital tunnel. Dr. Rhode was of the opinion that EMG studies are adjunctive tools. Dr. Rhode opined that petitioner's job exposure was causative to his symptoms in his bilateral hands and arms, and his right shoulder. Dr. Rhode further opined that the permanent restrictions he placed on petitioner as of 4/18/12 are related to the job activities that petitioner previously performed as a grill cook. Dr. Brody opined that the medical treatment he provided petitioner was reasonable and necessary.

On cross-examination Dr. Rhode reiterated that EMGs are adjunctive tools. He stated that he would not operate because of a positive one, and would not operate necessarily because of a negative one. Dr. Rhode opined that it is possible that petitioner would've gotten better just by having the carpal tunnel surgery performed and not the cubital tunnel surgery. Dr. Rhode stated that his credentials were higher than Dr. Newcomer's. He testified that he had URAC accreditation, and Dr. Newcomer did not. Dr. Rhode was of the

opinion that a grill chef at Steak and Shake is a highly manual position, and highly repetitive. He stated that it is a busy position and that the meat is not preform patties, so the grill cook has to form them themselves by pounding the patties, which are often semi frozen, into the form of a hamburger patty. He further stated that this job required a lot of forward reach in order to manage the cooking of the hamburger and other food items.

On 1/18/13 the evidence deposition of Dr. Newcomer was taken on behalf of respondent. Dr. Newcomer opined that as of the last time he saw petitioner on 2/24/12 that he was capable of returning to work without restrictions. Dr. Newcomer opined that petitioner's job for respondent as a line cook could potentially cause or aggravate carpal tunnel if he was doing them long enough. With respect to petitioner's cubital tunnel Dr. Newcomer was of the opinion that he would have first recommended conservative treatment prior to surgery. Dr. Newcomer opined that he did not see anything in the history to suggest that there was anything that petitioner did for respondent that caused his rotator cuff tear. Dr. Newcomer was of the opinion that he would keep someone off work for 4 to 6 weeks following carpal tunnel surgery, 6 to 8 weeks for cubital tunnel surgery, and for rotator cuff repair upwards of six months.

Currently petitioner's hands are fine about 90% of the time. He occasionally feels like they have arthritis in them. Petitioner denied any current problems with his elbows. Petitioner testified that he still has problems with his right shoulder when he lifts things. Over the last six months the muscles down the back of his arms feel like they are torn when his arms are hanging loose.

Petitioner gave a history of working as a truck driver from 1994/1995 to 2000. He testified that he then drove a forklift and motor trucks from 2000-2004. From 2004/2005 until 2007 petitioner again drove a forklift. When that last company went out of business petitioner applied for work with respondent. Petitioner testified that he has also worked as a carpenter off and on his whole life. The last time petitioner did any woodworking was in 2010. Petitioner's currently not employed and is looking for work off and on. Petitioner collected unemployment for a while before applying for SSDI. Petitioner has been receiving SSDI for about two years.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

As a general rule, repetitive trauma cases are compensable as accidental injuries under the Illinois Worker's Compensation Act. In Peoria County Belwood Nursing Home v. Industrial Commission (1987) 115 Ill.2d 524, 106 Ill.Dec 235, 505 N.E.2d 1026, the Supreme Court held that "the purpose behind the Workers' Compensation Act is best serviced by allowing compensation in a case ... where an injury has been shown to be caused by the performance of the claimant's job and has developed gradually over a period of time, without

requiring complete dysfunction.” However, it is imperative that the claimant place into evidence specific and detailed information concerning the petitioner’s work activities, including the frequency, duration, manner of performing, etc. It is also equally important that the medical experts have a detailed and accurate understanding of the petitioner’s work activities.

Since petitioner is claiming an injury to his bilateral hands, bilateral elbows and right shoulder due to repetitive work activities, in Illinois, recovery under the Workers’ Compensation Act is allowed, even though the injury is not traceable to a specific traumatic event, where the performance of the employee’s work involves constant or repetitive activity that *gradually* causes deterioration of or injury to a body part, assuming it can be medically established that the origin of the injury was the repetitive stressful activity. In any particular case, there could be more than one date on which the injury “manifested itself”.

Petitioner is alleging that he sustained an accidental injury to his bilateral hands, bilateral elbows and right shoulder as a result of his repetitive work activities that arose out of and in the course of her employment by respondent and manifested itself on 10/26/10.

Petitioner was employed with petitioner from May of 2009 to 11/14/10. During this period petitioner worked as a grill cook. Although petitioner spent time lifting items and filling the coolers, and making chili in a 30 gallon pot, the majority of petitioner’s day was spent cooking hamburgers on the grill.

When petitioner was working the grill he would place the hamburgers on the grill and with a spatula press them down. He would then use the spatula to flip the burgers. After the burgers were cooked he would scrape the grill clean before he started another set of patties. Petitioner testified that the hamburgers he grilled were preformed. As the burgers would heat up he would mash them down with the spatula and the fork until they were paper thin. Petitioner testified that this task was not really difficult unless the hamburgers had not been thoroughly thawed out. Petitioner would use both hands to perform this task. Petitioner would flex, extend, and twist his wrists while performing this task. During an average shift petitioner would cook eight pans of burgers. Each pan contained 140 burgers. On average, petitioner testified that he cooked 1000 hamburgers per shift.

Petitioner testified that when he was grilling hamburgers he would hold the tools in his right hand. To clean the grill petitioner would use both hands and a lot of force. Petitioner cleaned the grill approximately 3 times a day, and scraped the grill between each run of burgers. Petitioner testified that there were four runs of burgers on one grill, and two runs on the other grill. The busier it was, the faster the petitioner would perform these tasks. Petitioner testified that after about 10 months to a year of performing these tasks his hands and

arms began to bother him. Petitioner testified that scraping the grill, flipping the burgers, and smashing the burgers hurt his hands. He further testified that scraping of the grill and lifting bothered his right shoulder.

Before seeking medical treatment petitioner presented to an attorney and completed a job description. He noted constant repetition of the grill work, heavy lifting of supplies and rotating stock in the walk-in cooler and freezer. He identified the repetitions of his hands and arms varied from 1-50 a minute, 700-3000 per hour, and 2000-6000 per day.

On 10/26/10 petitioner signed an Application for Adjustment of Claim that alleged repetitive trauma injury to both hands and arms/shoulders.

Petitioner first sought treatment on 11/2/10 with Dr. Hoffman. At that time petitioner complained of pain in both arms radiating up to the elbows bilaterally over the last month. Petitioner made no complaints regarding his right shoulder. Dr. Hoffman assessed bilateral carpal tunnel and bilateral cubital tunnel. Petitioner then underwent an EMG/NCV that revealed bilateral carpal tunnel, but no evidence of cubital tunnel.

Petitioner's first complaints regarding his right shoulder was not until 12/18/10 to Dr. Rhode. At that time petitioner complained of right shoulder pain, elbow pain, and wrist pain secondary to an injury at work. These right shoulder complaints came a little over a month after he last worked for respondent. Petitioner reported that his symptoms began about 6-8 months ago. However, the arbitrator notes that when petitioner presented to Dr. Hoffman he made no mention of complaints regarding his right shoulder.

Thereafter, petitioner underwent bilateral carpal tunnel releases, bilateral cubital tunnel releases, and a right shoulder subacromial decompression and arthroscopic rotator cuff repair. Following the right shoulder surgery petitioner also underwent a right shoulder manipulation.

Dr. Newcomer agreed that petitioner began having pains in his wrists that would go to his elbows. He then noted that this was followed by a sharp pain in his right shoulder. Dr. Newcomer noted that prior to working for respondent petitioner drove a truck for 8 years, and that this was "another" occupation that would cause the propensity to develop these compressive neuropathies. Based on this finding, Dr. Newcomer was not convinced that petitioner's job for respondent was causally related to his diagnosis, even though he was of the opinion that his treatment was reasonable and necessary. He also stated that he had a problem pinning petitioner's problems completely and solely upon respondent as a contributing factor. The arbitrator finds these opinions speculative at best. Although petitioner may have been a truck driver and a carpenter, no evidence was offered to indicate when petitioner worked these jobs, or what his specific duties were with respect to these jobs. Additionally, the arbitrator finds that it is not necessary for Dr. Newcomer to pin petitioner's problems

"completely and solely upon respondent" as a contributing factor, since petitioner's work for respondent need only be "a cause", not "the cause" of petitioner's condition.

In Dr. Newcomer's deposition he opined that petitioner's job for respondent as a line cook could potentially cause or aggravate carpal tunnel if he was doing it long enough. He did not see anything in petitioner's job history with petitioner to suggest there was anything that petitioner did for respondent that caused his rotator cuff tear.

Dr. Rhode opined that the job of a grill cook for respondent is a highly manual position that is highly repetitive. He described the job as one whereby petitioner would need to form the preformed patties by pounding on the patties, which are often semi frozen, into the form of a hamburger patty. He also added that the job required a lot of forward reach in order to manage the cooking of the hamburger and other food items. Dr. Rhode opined that even though petitioner's diagnostic tests did not show any evidence of cubital tunnel syndrome, he was of the opinion that petitioner's job exposure was causative to his symptoms in his bilateral hands and arms, and his right shoulder.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that he sustained an accidental injury to his bilateral hands and bilateral elbows due to repetitive activities that arose out of and in the course of his employment by respondent and manifested itself on 10/26/10. The arbitrator bases this opinion on the petitioner's testimony regarding his work duties, as well as Dr. Rhodes understanding of petitioner's job duties. The arbitrator finds the job of cooking over 1000 hamburgers a day in the manner described by petitioner, as well as his other duties sufficiently repetitive enough to cause an injury to petitioner's bilateral hands and bilateral elbows.

The arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that he sustained an accidental injury to his right shoulder due to repetitive work activities that arose out of and in the course of his employment by respondent and manifested itself on 10/26/10. The arbitrator bases this finding on the fact that petitioner did not mention any complaints with respect to his right shoulder until after he retained an attorney, had been off work for over a month, and had not mentioned any shoulder complaints to Dr. Hoffman when he saw him in October of 2010. Additionally, the arbitrator finds the petitioner has failed to offer into evidence any detailed information concerning his work activities that allegedly caused his right shoulder tear. The petitioner reported that he lifted a chili pot, stocked the freezer, and moved boxes of french fries, but failed to include the frequency, duration, and manner of performing these activities.

14IWCC0317

Having found the petitioner sustained an accidental injury to his bilateral hands and elbows due to repetitive work activities that arose out of and in the course of his employment by respondent and manifested itself on 10/26/10, the arbitrator also finds the petitioner has proven by a preponderance of the credible evidence that his bilateral hand and bilateral elbows are causally related to the injury petitioner sustained on 10/26/10. The arbitrator bases this finding on the causal connection opinions of Dr. Rhode, as well as the opinion of Dr. Newcomer who opined that truck driving was "another" occupation that would cause the propensity to develop these compressive neuropathies, and that petitioner's job for respondent as a line cook could potentially cause or aggravate carpal tunnel if he was doing it long enough. The arbitrator reasonably infers from these opinions of Dr. Newcomer that petitioner's job was an occupation that would cause the propensity to develop compressive neuropathies, and that petitioner's job duties for respondent were a contributing factor, albeit, not the sole factor, to his bilateral hand and elbow conditions.

J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY: HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

Having found the petitioner sustained an accidental injury that arose out of an in the course of his employment by respondent on 10/26/10, and that his current condition of ill-being as it relates to his bilateral hands and bilateral elbows is causally related to the injury he sustained on 10/26/10, the arbitrator finds the medical treatment petitioner received for his bilateral hands and elbows was reasonable and necessary to cure or relieve petitioner from the effects of his injury on 10/26/10. The arbitrator bases this opinion on the opinions of Dr. Rhode, and the opinion of Dr. Newcomer that petitioner's medical treatment was reasonable and necessary, even though he believed it was not causally related.

Based on the above, as well as the credible evidence, the arbitrator finds the treatment petitioner received for his bilateral hands and bilateral elbows was reasonable and necessary to cure or relieve petitioner from the effects of his injury, and respondent shall pay all reasonable and necessary medical services pursuant to Sections 8(a) and 8.2 of the Act.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Having found the petitioner sustained an accidental injury to his bilateral hands and elbows due to repetitive work activities that arose out of and in the course of his employment by respondent and manifested itself on 10/26/10, and that the petitioner has proven by a preponderance of the credible evidence that his bilateral hand and bilateral elbows are causally related to the injury petitioner sustained on 10/26/10, the arbitrator finds the petitioner was temporarily totally disabled from 12/15/10-5/24/10, a period of 23 weeks. The arbitrator bases this finding on the opinion of Dr. Newcomer who opined that he would keep someone off

work 6-8 weeks for cubital tunnel surgery. The arbitrator finds the periods petitioner was off work after that date was related to his right shoulder condition, which the arbitrator has found unrelated to this claim.

Based on the above, as well as the credible evidence the arbitrator finds the petitioner was temporarily totally disabled pursuant to Section 8(b) of the Act from 12/15/10 through 5/24/11, a period of 23 weeks.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

As a result of his injuries petitioner underwent bilateral carpal tunnel releases and bilateral cubital tunnel releases. Dr. Newcomer was of the opinion that petitioner could return to full duty work without restrictions. Dr. Rhode gave petitioner permanent restrictions for modified heavy duty work with an overhead restriction of 25/35. Petitioner offered no evidence to show that his job duties exceeded these restrictions.

Currently petitioner's hands are fine about 90% of the time. Occasionally feels like they have arthritis in them. Petitioner denied any current problems with his elbows.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner sustained a 10% loss of use of his right hand, 10% loss of use of his left hand, 7.5% loss of use of his left arm, and 7.5% loss of use of his right arm pursuant to Section 8(e) of the Act.

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILLAMSON)

<input checked="" type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Rice,
 Petitioner,
 vs.

14IWCC0318

NO: 10 WC 16588

Big Ridge, Inc.,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 27, 2013 is hereby affirmed and adopted.


IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

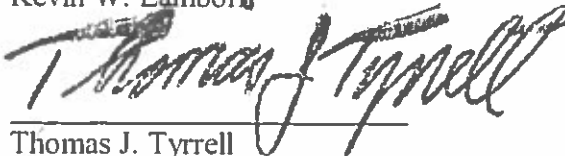
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

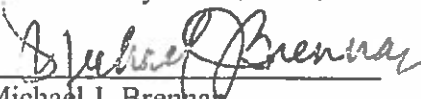
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **APR 30 2014**

KWL/vf
 O-4/22/14
 42


 Kevin W. Lamborn


 Thomas J. Tyrrell


 Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

141WCC0318

RICE, ROBERT

Employee/Petitioner

Case# **10WC016588**

BIG RIDGE INC

Employer/Respondent

On 9/27/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0536 RON D COFFEL & ASSOC PC
502 W PUBLIC SQUARE
PO BOX 366
BENTON, IL 62812

0693 FEIRICH MAGER GREEN & RYAN
PIETER N SCHMIDT
2001 W MAIN ST SUITE 101
CARBONDALE, IL 62903

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

19(b)

14IWCC0318

Case # 10 WC 016588

Consolidated cases: _____

Robert Rice
Employee/Petitioner

v.

Big Ridge, Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Herrin**, on **07/12/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other

14IWCC0318

FINDINGS

On the date of accident, **04/06/10**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$61,762.00**; the average weekly wage was **\$1,211.02**.

On the date of accident, Petitioner was **58** years of age, *married* with **0** dependent children.

Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$6,343.49** for TTD, \$ for TPD, \$ for maintenance, and \$ for other benefits, for a total credit of **\$6,343.49**.

Respondent is entitled to a credit of **\$10,618.87 for medical bills** under Section 8(j) of the Act.


ORDER

For reasons set forth in the attached decision, the incurred \$662.00 in medical expenses (see PX8) and the prospective surgery and associated medical treatment for carpal and cubital tunnel syndrome requested by the claimant are denied as not causally related to the injury of April 6, 2010.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

Sept. 26, 2013
Date

SEP 27 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT RICE,

Petitioner,

vs.

BIG RIDGE, INC.

Respondent.

14IWCC0318

No. 10 WC 16588

ADDENDUM TO ARBITRATION DECISION

This matter was heard pursuant to Sections 8(a) and 19(b) of the Act. The petitioner had two other pending claims, 11 WC 20999 and 12 WC 12320, which are referenced in the records and depositions. Neither party requested consolidation of the three matters. The parties further indicated the other matters were pending settlement as of the time of the hearing.

STATEMENT OF FACTS

The claimant works as a ram car operator at the respondent's underground coal mine. A ram car is an industrial machine, approximately 38 feet long, which moves coal to the beltline. A photograph of the car was introduced as PX9. The ram car is powered by a 128 volt (128V) DC battery. The battery itself was described as approximately 4' wide, 10' long, and 3' high, weighing approximately 5000 pounds. One of the petitioner's job duties involved maintenance and charging of the battery as needed. He described machinery would lift the battery off the car in order to charge or replace the battery, and a new battery would be mechanically inserted.

On April 6, 2010, the petitioner was engaged in changing the battery. He had earlier in the shift been washing equipment and described himself as being wet from the waist down and was wearing steel toed boots. While the battery has a circuit breaker on the top of the battery, the petitioner reported this breaker was not functional. During the course of changing the battery, he touched the current source with his left hand and described being shocked for approximately twenty to thirty seconds.

The petitioner was taken by ambulance to Harrisburg Medical Center. See generally PX1. He reported having been shocked by between three and four thousand volts. He denied loss of consciousness, and on examination no entry or exit wounds were observed. He reported some numbness and tingling in the left arm but denied chest pain or shortness of breath. Radiographs of the left shoulder and chest were normal and EKG testing was negative. He was admitted for overnight observation. The next day it was

noted he had no neurologic deficits or complaints and he was discharged with instructions to follow up with a neurologist.

On April 8, 2010, he saw a primary care physician, Dr. Rider. See PX3. He reported the feeling in his arm was returning and the symptoms were improving. He was instructed to keep his pending follow-up with the neurologist and was kept off work pending that follow-up appointment.

On April 16, 2010, Dr. James Alexander at the Alexander Family Practice noted that he had received a note that the claimant had been hospitalized due to a DC battery shock. Dr. Alexander noted that he looked it up that day and found "nothing to be of concern" and was unsure as to why the petitioner was off of work. RX4.

The petitioner saw Dr. Sawar, a neurologist, on April 28, 2010. See PX2. He reported some improvement in the left arm and hand. Dr. Sawar prescribed MRI of the brain to rule out ischemic stroke and EMG studies. The EMG was done that day. It noted chronic radiculopathy into the legs stemming from the lumbar spine and mild right-sided carpal tunnel syndrome. The left arm and hand tested as normal. PX2. The MRI of the brain was conducted on May 5, 2010, and was negative for hemorrhage or any structural abnormality. PX2.

On May 6, 2010, the petitioner reported to Dr. Rider that while the EMG was normal, "he knows this is not the case" and requested a second opinion. Dr. Rider noted that the petitioner had a follow-up scheduled with Dr. Sawar but also provided a referral to Dr. Woeltz, a neurologist, and deferred work restrictions until Dr. Sawar's report arrived. See PX3.

On May 26, 2010, Dr. Sawar noted improved strength and reduced symptoms in the left arm. Strength was now rated at "5/5 in all four extremities." He recommended the petitioner continue current management and follow up in a month. PX2. Dr. Sawar's notes do not reflect any work restrictions, and the petitioner apparently returned to work on light duty as of May 31, 2010.

On June 23, 2010, Dr. Sawar noted increased symptoms in the left forearm, but no weakness was observed. He again assessed post electrical injury of the left upper extremity without evidence of motor neuropathy, and instructed him to follow up. On July 28, the petitioner reported no change in symptoms and Dr. Sawar recommended a referral to a neuromuscular specialist for further evaluation. PX2.

On December 8, 2010, Dr. Sawar noted the petitioner had not seen the neuromuscular specialist and assessed the petitioner with left arm pain of unclear etiology. While he instructed the petitioner to return in three months, the petitioner did not do so. PX2.

The claimant then presented to Dr. Kadiyamkuttiyil on January 24, 2011. Following examination, Dr. Kadiyamkuttiyil assessed possible cervical stenosis,

recommended vitamin deficiency testing and prescribed repeat EMG study. The repeat EMG was performed on February 22, 2011 and indicated severe left ulnar neuropathy and moderate to severe left carpal tunnel syndrome. The petitioner was thereafter referred to an orthopedic surgeon for evaluation. See PX4.

The petitioner saw Dr. Beatty, a hand surgeon, on April 25, 2011. Following examination, Dr. Beatty recommended surgical intervention to the elbow and wrist for carpal and cubital tunnel release. In correspondence to the petitioner's attorney thereafter, Dr. Beatty wrote that he believed a causal connection existed between the electrical shock and the carpal and cubital tunnel syndrome. PX5.

The respondent had the petitioner seen by Dr. Crandall pursuant to Section 12 of the Illinois Workers' Compensation Act on August 10, 2011. The claimant did not allow for hand testing or further EMG analysis. Dr. Crandall concurred with the diagnosis of carpal and cubital tunnel syndrome but opined that given the fairly low current and lack of significant damage to the surrounding tissues, there was no causal relationship between those conditions and the electrical shock on April 6, 2010. See RX2.

In October 2011, the petitioner sustained a work injury to his left wrist when he fell and struck a rock. He advised this injury did not require treatment and described it as a bruise. Dr. Rider's records note on November 3, 2011, the petitioner reported moderate, sharp, stabbing pain in the entire hand. Examination noted swelling, tenderness, abnormal mobility, and crepitus in the left hand. The diagnosis was a left hand sprain. The petitioner was involved in another work injury on March 27, 2012. He presented to Dr. Rider on March 30, 2012, for complaints of a neck strain and left shoulder pain that radiated into his left arm and hand.

The petitioner sought care with Dr. Morgan, an orthopedist, on April 11, 2012. See generally PX6. The petitioner apparently reported that the electrical shock knocked him unconscious and caused severe swelling to the left hand. He also reported a mass between the third and fourth fingers of the hand. Dr. Morgan noted that he was awaiting the EMG studies for review by expected surgical intervention would be required. On August 7 and September 21, 2012, Dr. Morgan recommended surgical releases to the carpal and cubital tunnels and resection of the lesion.

Depositions of Dr. Morgan and Dr. Crandall were conducted on January 17 and February 5, 2013, respectively. See PX7, RX2. The petitioner continued to work for the respondent until the mine closed; at the hearing date, he was employed at another mine.

OPINION AND ORDER

Causal Connection to the Injury

The initial injury is not in dispute, and the issue at present is whether the carpal and cubital tunnel conditions, as well as the left hand mass/lesion, are causally related to

the electrical shock of April 2010. When the question is one specifically within the purview of experts, expert medical testimony is mandatory to show that the claimant's work activities caused the condition of which the employee complains. See, e.g., *Nunn v. Industrial Commission*, 157 Ill.App.3d 470, 478 (4th Dist. 1987). In this case, the claimant has failed to prove to a medical and surgical certainty via expert testimony that his conditions are causally linked. Dr. Morgan did testify in support of a causal connection between the electrical shock and the surgical recommendation. However, examining his testimony in deposition further, it is notable that Dr. Morgan admitted:

Q: And if the employee had sustained nerve damage from this alleged shock in April of 2010, would you not agree that there should have been some evidence of nerve damage on the EMG nerve conduction study that was taken approximately 1 month after the incident?

A: I would think so.

See PX7, pp.48-49. No such findings were demonstrated. Dr. Morgan further acknowledged the petitioner's unrelated cervical spine and systemic deficiency conditions could be contributing or causing the symptoms. PX7, pp 50-52. Dr. Morgan did acknowledge that the mass, which the claimant asserted was present immediately following the incident, was not mentioned in any of the medical records prior to his seeing the petitioner. Dr. Morgan also apparently lacked substantial information regarding the intervening incidents, and, more significantly, appears to have been provided misinformation regarding the April 2010 injury, as the petitioner apparently told Dr. Morgan the electrical shock was severe enough to cause both severe swelling and loss of consciousness, facts belied by the treating medical records at the time of the hospitalization.

Dr. Crandall further makes several persuasive points. First, he concurs with Dr. Morgan that had the shock caused nerve damage, the initial EMG would have been positive for nerve damage, which it was not. Second, he notes that had the shock caused nerve damage, there would have also been damage to the radial nerve, and the asserted state of ill-being only involves the median and ulnar nerves; there is no evidence of a radial nerve injury in the records. Lastly, he observes that had the claimant suffered traumatic nerve damage, the symptoms would not have improved shortly following the incident. This improvement was in fact reported to the treating medical providers at the time; the claimant's testimony that his symptoms never receded is belied by multiple references in the treating medical records and lacks credibility.

The Arbitrator finds a lack of persuasive evidence to causally connect the electrical shock of April 2010 with the carpal and cubital tunnel syndrome. Moreover, the mass between the third and fourth fingers is not mentioned in the medical records prior to 2012 and was not apparent at the time of Dr. Crandall's evaluation. The emergency room records specifically note no entry or exit wound or burn that would correlate to the mass formation. Causal relationship between the electric shock and the mass formation is therefore denied as overly speculative.

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Medical Services (Past and Prospective)

The medical services provided with regard to the hospitalization and treatment for the electrical shock at and temporally proximate to the initial injury appears to have been paid and the Arbitrator's review of the documents submitted show expenses incurred for such treatment to have zero balances. The \$662.00 in disputed medical expenses (see PX8) are denied as not causally related to the injury of April 6, 2010. The prospective carpal and cubital tunnel surgery and excision of the lesion as requested by the claimant are likewise denied, due to the lack of a causal relationship.

Temporary Total Disability

The parties stipulated entitlement to TTD to from April 7, 2010, through May 31, 2010, inclusive. While the stipulation sheet refers to this as 3 & 3/7 weeks, the Arbitrator notes this as a typographical error. TTD benefits are awarded for the above period, being 7 & 6/7 weeks. At the appropriate rate of \$807.35, a total liability of \$6,343.46 results. The respondent is credited \$6,343.49 in disability previously paid against this amount, satisfying their liability for TTD benefits to the present.